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**14.22 hrs**

Title: Discussion on the Companies (Amendment) Bill, 2001. (Bill passed) (Bill passed)

MR. DEPUTY-SPEAKER: The House shall now take up the legislative business.

Item No. 18 -- Shri Jaswant Singh.

THE MINISTER OF FINANCE AND COMPANY AFFAIRS (SHRI JASWANT SINGH): Mr. Deputy-Speaker, Sir, I beg to move:\*

"That the Bill further to amend the Companies Act, 1956, be taken into consideration. "

This Bill was introduced on 30<sup>th</sup> August, 2001. Thereafter, it was referred to the Departmentally-Related Parliamentary Standing Committee on Home Affairs when it was with the Department of Law, Justice and Company Affairs.

The Committee has submitted its Report to Parliament on 23<sup>rd</sup> July. The Committee has suggested certain amendments. Most of them have been accepted. Official amendments to the Bill will be moved.

Sir, I do not want to make a long speech in this regard. The Standing Committee has already considered this issue. In fact, it would be appropriate if the House considers passing of this Bill without discussion because I have another Companies (Amendment) Bill also. But in this regard, if you do want me to say a few words, I can say a few words. But I would request the House to consider this legislation.

MR. CHAIRMAN: Motion moved:

"That the Bill further to amend the Companies Act, 1956, be taken into consideration. "

\* Moved with the recommendation of the President

SHRI PRIYA RANJAN DASMUNSI (RAIGANJ): Sir, I rise to support this Bill on behalf of my party Indian National Congress. This is a long awaited Bill to overcome the complexity and multiplicity to dispose of the grievances of the workers and the management specially in the sick and unmanageable units of India.

Sir, it is our experience, as we represent the House from various parts of the country, and we feel that a time has come now to think for a comprehensive legislation without having any multiple corner to understand the issue, to dispose of the issue and to decide the issue.

This Bill has been dealt with at length by the Departmentally-Related Standing Committee and very comprehensive observations have been made, of which many are constructive. I am glad -- though not fully -- that substantially the Government and the Minister have conceded them. Yet I feel that there are some areas which should be dealt with today.

Fortunately enough, the Finance Minister is also holding the joint portfolio of Company Affairs with a view of changed circumstances of the global economy, the economy of the country and changed circumstances of our own economy in this region. He has coined the words 'liberal economy'. Unless the Ministry of Finance and the Ministry of Company Affairs are in one common umbrella, the details of the industrial growth, the understanding of the company management and the problems of the unit cannot be substantially appreciated.

Possibly it is keeping all this in view that the Finance Minister is also holding the charge of Company Affairs. Nevertheless I feel strongly that the Labour Ministry, which is a very important Ministry in this matter, should not be ignored. The manpower, human resource and working class are the essential components of any industrial organisation. Whatever may be industry, whatever may be the company, human resource is one of the basic components

Unless the objective study of the human resource and its involvement is not taken care of for the development of the country through the companies in productive life, the very objective of this Bill would be frustrated. I do not know how the hon. Finance Minister will find ways and means to attach the Labour Ministry or the Labour Ministry

Council into the whole apparatus. Why I say so? I say so because some doubts have arisen.

It is about criterion as to who will represent the Tribunal. On page 4 of the Bill, at Section 10FD(h), it is written:

"It is a person having special knowledge of, and experience of not less than fifteen years in the matters relating to labour. "

It gives the message as if the interest of the labour class and, working class is taken care of. No. It is not correct. A person having knowledge of labour can be a Deputy-Secretary, Ministry of Labour; he can be a retired Commissioner of the Joint Council of the Labour in respect of States who normally represents the interest of the Government part than the labour.

I would very humbly - time is too late - request the hon. Finance Minister to consider including a person having special knowledge and experience of not less than 15 years in the matters relating to trade union and the labour matters. The use of the word 'trade union' here will give confidence to the working class that in the tribunal there is a representative who can understand their problem and who will take care of them. The moment it says, 'only person in the matters relating to labour', everybody will say that he has a good knowledge of labour whether right or wrong. Interest of labour and experience of trade union are altogether different. Therefore, my humble appeal to the hon. Minister is to consider this aspect first and give it a foolproof character. The tribunal should be adequately represented by either a judicial, technical or a member of the interested group, that is, from the vast area of the working class. Otherwise, this provision could be misinterpreted in various ways.

Supposing, somebody is a practising lawyer of a High Court, dealing with labour matters, one may say that the Chief Justice, while consulting him to nominate 62 people, gave the name of a leading practitioner who is practising law for long. This will not satisfy the working class.

(j2/1430/rc/asa)

You better consult the trade unions. In the Ministry of Law, there are lists of recognised trade unions which include minor trade unions, trade unions of steel industry, coal industry, and different other industries. You can, at least, take one of them into confidence and put them into the Tribunal. Therefore, this particular Clause requires to be further elaborated to give a comprehensive character to the Tribunal.

Sir, I would like to draw the attention of the hon. Minister since he is holding the charge of the Ministry of Finance on this. I do not want to take a long time in narrating the history, but I would like to give a brief account based on my own experience. I have represented twice a constituency which was once known as Birmingham – City of Howrah. Now, it is a very sick city in terms of industry and other things. How does an industry become sick? We are passing this Bill to know this. As a social worker, I have gone through it in detail and I found five special ingredients. One of them is that the small and medium scale industry unit submits a project. The day it is approved by the bank, from that day itself, they start charging the interest on the loan. We have been arguing this matter in CII, FICCI, ASSOCHAM, small scale industry forum, medium scale industry forum and also with the Finance Minister. There are three stages of a project, namely, the project conceived, the project approved, and the project in operation. The project is conceived and placed before the bank. The bank approves the project. Now, the project can come into operation if the environment clearance has been obtained, electricity connection has been taken, land problem is solved, etc. After all this, the unit can start its production. But before the production starts, the interest is charged which that unit cannot cope up after launching its product in the market. Therefore, from day one, it inherits state of sickness. I can cite many such examples.

I would give an example of this in today's liberal economy. This unique example relates to Delhi. The Minister of Finance may look into it. I am not pleading for any company. Please do not misunderstand me. The pressure cooker is a unique thing in India for every household. Many pressure cooker producing units are based in Delhi, NOIDA, and Ghaziabad. Today, Chinese pressure cookers are dumped at half the cost – excluding profit -- of indigenous pressure cookers which are produced by these small units. Now, the projects of small scale units which are producing things like pressure cooker, spoons, knives, etc. are approved on their market capacity. But if you allow to dump such things at a lesser price, how would they survive? I know you will raise the issue of WTO but WTO gave ample power and opportunity also to decide your priority for increasing or for imposing anti-dumping duty. We are friendly with everyone. But I am sorry to say that in future, the Chinese invasion of this country will not be in terms of arms. It would be by way of hitting our domestic market which would kill all prospects of our small and medium scale units.

I had been to Pragati Maidan to see this year's exhibition. There I found that people of Ludhiana, Patiala, Asansol in West Bengal, Nasik, Tamil Nadu, Karnataka and other places are very skilled.

They are skilled people who apply the apparatus and spare-parts of the tractors, machine tools and other elements themselves. Here, the basic minimum components are; electricity is the first raw material which is charged either by a private company or by a State Electricity Board at a certain rate; secondly, they have to pay wages and other benefits to the skilled workers. Today a daily agricultural wage earner in West Bengal gets Rs.60 per day. Naturally, a skilled industrial worker may get a little more than that. Add that component to the cost of production. The third component is the cost of establishment. Taking all these into account, if your cost of production comes to 'A', plus a profit of 10 or 20 per cent, if you find one fine morning that at 50 per cent of your cost things are being dumped into the market in bigger numbers, what kind of protection do you give by the National Company Tribunal to these units? They will have inherent sickness from day one. They cannot cope with this kind of dumping. I am not bringing politics into it. But this is unfortunately the reality of the day. How are you guaranteeing that this would not happen? This is the first symptom of the sickness.

Now I come to the second symptom of sickness. Here I am not in agreement with the so-called management. You decide the slab. Each unit – even if they are in the small scale industry – must have to satisfy before registration or fulfil an obligation that they have in their management a professional insofar as financial matters are concerned who will give a clear direction that this is the project, this is the required manpower that it needs, if it goes beyond this manpower to please A, B or any political party or some local leaders, the company will suffer inherent sickness within a year or two and the liability will be more. Therefore, unless there is professional management in a unit which will give the project direction in terms of financial viability and the project operation, no unit should be registered.

I concede that we have not done this in the past. The country's unemployment problem was very big. Whether good or bad, people had to be employed and the requests of the local leaders had to be entertained. Otherwise, things would have been worse. I do not blame the management either. Now, through a regulation you can see to it that the project will take off provided conditions A, B, C, and D are complied with. In that case you can show the card and say that your financial documentation says like this, you cannot keep more than one *chowkidar*, more than two clerks in the unskilled category and only in the skilled category you can have some people. Then there is logic to convince others. Without this, you cannot give the management a long rope to plan and design.

Some of the managements have developed a new practice. There are three or four brothers; one is an Accountant; another has come back either from USA or London with some degree and the management is good. But sometimes that management gives in to local pressure and cannot cope with the required manpower that is needed to the unit, and goes beyond that. From the very next year it starts getting sick. If you study some of the sick industrial units, you will find that this is the second symptom for the sickness.

The third symptom is very important for the Finance Minister to understand. Most of the public sector banks are responsible for this. I charge them, accuse them and hold them responsible for the sickness of the industry today. I get an assurance that on my project papers, I would get a working capital to the tune of X or Y or say Rs. 20 crore. Accordingly, I plan the execution with the first slab of Rs.4 crore, the second slab of Rs.6 crore and things like that to expand my market. But, after approving the project your bank people delay the release of the working capital to such an extent that the unit itself gets collapsed. They start borrowing from the market, over-burdening themselves with the interest which they cannot show to the Income Tax authorities. Then they start doing *hera pheri* because they are compelled to sell raw materials in the black market in order to keep the unit surviving. All this happens because the bank does not comply with its own time table of releasing working capital required by a company.

The third symptom is, the unit turns to be sick. The fourth symptom is, who is against the management and not against the bank. The fifth symptom is about the bank management. I do not like to name more because the original father of malpractices in India is from Bengal. They used to do it. We are now trading jute. Jute is not giving rich dividend. Siphon off whatever is there in the unit, swallow whatever is there in the unit, close the unit and convert or divert this amount to some other business with a false project name and get further money from the bank. The Allahabad Bank, the United Commercial Bank of Calcutta and UBI of Calcutta lead to the horrifying tale of sickness. Now they are at least surviving by your strict monitoring. But it was because of these things. On the same table, they are talking to a man to withdraw money from jute and put it in tea trade. They give advice on how to make jute sick and go to tea business. Then they settle another man who will be getting them tea within two months at a particular price. There is an internal arrangement of these three banks in Calcutta. I studied this matter in depth.

I must congratulate the officials of the Finance Ministry for their strict monitoring, surveillance and recovering the NPAs and for so many other methods. These three banks have come to line at least. So, this is about the management.

I do not know economics as I am a student of political science. Sometimes I am surprised and I fail to understand one point. A company is declared sick and the matter is referred to the BIFR. The company's management could not pay the provident fund, the company could not pay the salary. But the same company management, in a different

nomenclature, is operating another company having fund from another bank and giving lectures to CII and FICCI. This is something like playing fraud in the country. If one management played with one bank, how the son or daughter, with another nomenclature or other firm, get the support of other banks in the country to get it again? On the one hand, your NPA is rising, on the other hand, the project is collapsing and on yet another hand, the workers go back home with empty stomach. This is the symptom where the management is playing fraudulently with the banks in connivance or sometimes on their own design and they do it. All these culminate to sickness.

Last but not least is another symptom of sickness and that is, modernisation. I will place two glaring examples of modernisation package before you. The Hoogly Dock and Port Engineers, Calcutta was a prime unit of India to support ship-building. Shri Rajiv Gandhi was our Prime Minister and before that Shrimati Indira Gandhi was our Prime Minister and in between, Shri Morarji Desai was our Prime Minister. A long term proposal was conceived twice by the Ministry and the go-ahead signal was given. But money and order for the long term proposal were not executed for 12 years. That compelled the company to become sick and go for sale. Of course, the new Minister, Shri Goyal is trying to protect that. The papers are with me. I have gone through the papers. Even when I was a Minister, I was surprised as to how it can happen. In the entire Finance Ministry, there should be three desks. This is my suggestion. You may or may not accept it. Desk-I should be for new companies, namely, companies that exist in the country for the last five years. Desk-II should be for companies which are languishing before the court and Desk-III should be for companies which have a revival package. Somebody in your Ministry, in consonance with the Department of Company Affairs, shall monitor the progress of these desks in each State. You have office in each State.

There is no monitoring. You can involve the banks in respective desks who are their bankers. If you adopt this method and mechanism, then, I think, even the National Company Law Tribunal would be a successful one.

I would also like to draw the attention of the hon. Minister to another point. This is about the appeal. Now, this Bill, in part 1 (c) mentions about Appellate Tribunal. If I am aggrieved and did not justice, I can go to the Tribunal. But my appeal to you is this. Do not treat companies' revival or sickness or winding up issue like the election petition of political candidates. That has become an unending process. You must find some mechanism that the Tribunal must dispose of a particular case in a particular bench within so many days. There should be time limit that the appeal should be disposed of in so many days. If you cannot ensure that, then I think, justice will not be done. There are so many adjournments day in and day out. It is because today the lawyer is not ready, and on the other day the Government is not ready. Then, it becomes an unending process. The intention is to escalate the whole thing to an unending process. Is the Government not thinking that time has come to fix accountability on the Tribunal itself, on the lawyer itself and the Appellate Tribunal itself?

I am giving you the example of National Instrument Company, Kolkata which was one of the finest Companies in India which first produced infra-red light for Vaijayanta Tank. When I got elected for the first time in 1971, I had the privilege to represent that area and to become President of that Company's Union for twelve years without any party affiliation. How skilful were they! Now, privatisation has started. They are not getting enough orders. That is different thing. The Ministry and the Cabinet headed by Prime Minister, Shri Atal Bihari Vajpayee, on 18<sup>th</sup> June last year took a decision to revive this Unit. It was to be informed to the BIFR. Can you believe, Mr. Minister, that the official, the Joint Secretary in-charge of that desk – I do not know whether wilfully or due to ignorance – did not comply with the Cabinet decision and the BIFR was not informed. So, BIFR, after waiting for a few months, had no option but to give wind-up notice. I brought this to the notice of the hon. Minister, Shri Balasaheb Vikhe Patil. I told him, 'Look, how bureaucracy is functioning'. He was surprised. This is how things are being done these days.

If you do not fix accountability on the part of the Department and on the part of the Tribunal, I do not think the object that you have narrated in the Statement of Objects and Reasons of this Bill will be achieved. We are supporting you on this Bill. I should be grateful if the hon. Minister kindly explains these issues and offer proper clarifications. Please ensure that anti-dumping measures are strictly adhered to. Otherwise, I am worried about what will happen to India, especially in our industrial sector. The whole objective will be in jeopardy.

I seek clarification from the hon. Minister on one count. Kindly see that trade union leaders, who represent the working class, are given representation in the Tribunal in some form or the other. The definition has got a wide scope. You may say that the lawyer who is there in the Tribunal represents the labours' interests; or the retired Deputy Secretary represents the labours' interests or the Joint Secretary in the Ministry of Law represents the labours' interests. But they are not the representatives of the interested group. But the trade union leaders represent the interested group. Therefore, give importance to the trade union leaders and directly involve them in the Tribunal.

With these words, I support the Bill.

SHRI BIKRAM KESHARI DEO (KALAHANDI): Mr. Deputy-Speaker, Sir, I rise to support this Bill. As the hon. Minister has already stated, this Bill was referred to the Standing Committee.

The Standing Committee made a threadbare discussion on it and made its recommendations. Accordingly, the amendments to the Act have been brought forward. Now, they will be piloted and passed.

This is a very welcome Bill considering the present industrial scenario in the country and the globalisation scenario. By virtue of this Amendment Bill, our country's companies laws and the companies are being revamped; the industrial scenario is being revamped. This is basically a revamping Bill. I would like to call it so because the nomenclature of the Company Law Board is being changed and is being known as the Tribunal by virtue of which they will look into the affairs and activities of the companies in various fields. Therefore, this is a welcome Bill.

With these words, I support it wholeheartedly.

SHRI RUPCHAND PAL (HOOGLY): Sir, I rise to oppose the Bill. For that only, I have stood up....(*Interruptions*)

श्री चन्द्रकांत खैरे (औरंगाबाद, महाराष्ट्र) : यह स्टैंडिंग कमेटी से आया है।

श्री रूपचन्द पाल : स्टैंडिंग कमेटी ने क्या किया, क्या नहीं किया - that has not been submitted to me....(*Interruptions*)

I would request the hon. Members to look at the Statement of Objects and Reasons of this Bill. It is written there like this.

"The latest developments and innovations in Corporate laws required that the Companies Act, 1956 and other related laws concerning winding up of companies should be remodelled in line with the international practices in this field. Government constituted a Committee consisting of experts under the Chairmanship of Justice V. Balakrishna Eradi, retired Supreme Court Judge to examine the law relating to insolvency and winding up of companies."

It was not to examine the revival and rehabilitation of sick industries. It was to examine the law relating to insolvency and winding up of companies.

Please look at the Terms of Reference of Justice Eradi Committee to find out if any single word has been used about revival and rehabilitation. I think there is not a single reference about revival. Subsequently, just to convince the gullible and innocent people that it has some relationship about revival and rehabilitation that something was incorporated later on. I am not using the word 'cheating' here. I am rather using the term to make it apparently acceptable to the gullible and the innocent. So, it was incorporated later on. On the basis of whose recommendations, was the Justice Eradi Committee set up?

The Bill, as it has been prepared, has nothing to do with revival and rehabilitation. Secondly, simultaneously, there is another Bill that was being considered by another Committee, not by this Standing Committee which considered the Company Law (Amendment) Bill. It is the Sick Industrial Companies (Special Provisions) Repeal Bill. Although it has been referred to a Standing Committee, the Committee has not yet completed its consideration. I am constrained to make a reference to it.

Sir, you are the custodian of this House. The recommendation of that Committee has not yet come. Its recommendation has been taken for granted in this Bill. Can it go like that? One Bill has been referred to a Standing Committee. Another Standing Committee has made certain recommendations which are considered to be the alternative to the Repeal Bill. The Repeal Bill is yet to be considered by the same Standing Committee.

The recommendations of that Standing Committee are being brought to the House. This is a denigration of the rights and authorities of this House. All the Standing Committees are equally powerful and have equal rights. How can the recommendations of one Standing Committee stand superior to the recommendations of another Standing Committee which is yet to complete its consideration? But this is being done here.

Sir, I would like to make a mention of another Bill in this regard. There was a Bill in 1997 which aimed at plugging the loopholes in the BIFR and to strengthen the mechanism. We are all aware as to what has happened to BIFR and how Section 22 of BIFR has been misused by unscrupulous industrialists who make their own units sick and they themselves become rich because no industrialist had ever become sick or poorer in this country, but their industries have become sick. The representatives of the Government have been directly involved in the misuse of Section 22 of BIFR. The Government's representatives, the nominee Directors of the Government have been repeatedly found to be involved in this ugly game.

I can cite one example here. In Dunlop India Limited, 34 per cent of shares are held by the Union Government's financial institutions like LIC, UTI, United Bank of India etc. Dunlop India Limited was a profit-making company. The hon. Finance Minister knows pretty well that the products of only this company, particularly tyres and tubes, have

been purchased by the Indian Air Force during the Kargil war. When the hon. Prime Minister requested the Chief Minister of West Bengal at that time to see to it that whatever products are available in the closed Dunlop India Limited are made available to the Defence Forces. The workers who have not been receiving their wages for months together, the starving people, cooperated with the Government by opening the unit and making the products available to the Defence Forces during the Kargil war. The Defence officials, who had been present there, were full of praise for the starving workers for their timely cooperation in supplying those products. But in a meeting held in Mumbai, the nominee Director of LIC was absent and on that day, they referred Dunlop India Limited to BIFR as a sick company which it was not.

Sir, I can mention a number of such instances where the nominee Directors of the financial institutions, the nominee Directors of certain other governmental agencies collaborated with the company people in misusing Section 22 of BIFR. Of course, Shri Jaswant Singh was not the Finance Minister at that time, but the Government is a continuous body. I would not like to mention as to who was in the Government at that time. How many benches have been constituted of BIFR in the last several years? Has there been a single occasion when all the benches had all the members in the Board to go into the cases? No. During the last two or three years, only a single member was there and for the last several months, not a single member is there. Who is responsible for this? Are the workers responsible for this?

The managements, in collusion with Government's representatives, are declaring profit-making companies as sick companies by misusing Section 22 of BIFR. The Government is failing to provide the necessary infrastructure, the workers are suffering, but the Bill for winding up of companies is coming up for consideration here.

**15.00 hrs.**

To whom will it go? The official liquidator was sometimes someone else. The operating agents may be IDBI or some financial institution. Now, the private liquidators will come. The private liquidators are the same people who had made their own company sick and will now themselves become the liquidators. They will themselves purchase these things. They call it 'corporate reforms'.

SHRIMATI MARGARET ALVA (CANARA): Their children will get jobs in the MNCs.

SHRI RUPCHAND PAL : Corporate governance is one area. Have they ever looked into that? The Department of Company Affairs is a regulator of the companies in the country. It is an appendage. It is a part of the Union Government. Earlier, it was with some other Ministry. Now, after long lasting deliberations, litigation and fight among themselves, it has come to be attached with the Ministry of Finance.

Why is it so? It should be a fullfledged regulator. It will be transparent. But instead it is selective in the case of favouring some companies who are malfunctioning. Why is there no transparency? There is manipulation. There is fudging in their balance-sheet. Two sets of balance-sheet are there. There is siphoning off of funds from one company to the other. It has happened. I know, so many letters have come to the Department of Company Affairs. Sometimes that Department did not respond. I charge this Government and not this individual Minister. The Government is a continuous body. The Department of Company Affairs had been indulging in such cases of patronage to the most corrupt companies in the country. They had access to the Prime Minister's Office. One eminent bureaucrat had one very important observation to make about the "RH factor" regarding the two big corporate houses. In the PMO, they are determining everything. The small fish are being swallowed up. The small industry is suffering. It is not my observation. Everyone in this House agree to it. To whom will the oil sector go? The people are discussing it. Who will monopolise the information technology or the telecom sector? The people are discussing it: "The monopoly of public sector is very very bad! Private monopoly is very good!" Is this Bill at all going to serve any purpose? No, not at all because the sickness has actually two sets of faces. One is an extraneous one which it cannot control. It has its capacity. The capacity utilisation is not there because there is a recession in demand. We had joined the WTO. As a result of that, the products of cheaper quality are flooding our markets. So, there are extraneous reasons in the case of our small industry, medium industry, steel sector and heavy industries. The technology is changing. The market perception is changing. Following the WTO, our markets are having quality products at a cheaper price. Naturally, what is happening? The industries have become sick. Some are sick because of the economic policy of the Government. Some are made sick by their friends. Some are helped to become sick with the collaboration of their agents. Now, they are deciding to wind them up.

I can refer to any number of instances where the Government nominee acts as a collaborator and where the Department of Company Affairs did not go deep into the accounting standards. Now, they are saying: "We shall have better standards of accounting." But who does not know that the corporate houses in this country do have two or three sets of balance-sheet? One is for the financial institutions. They are looting the money but not paying it back. After these things, they say that a single body will become very beautiful.

That the jobs and the responsibilities of BIFR, AAIFR, Company Law Board and High Court will be telescoped into

one body. What a beautiful thing! Single is beautiful, but in the case of UTI bifurcation is beautiful, that is, UTI-I and UTI-II. In the case of General Insurance, which is making profit, bifurcation is beautiful because bifurcation will serve the interest of the multinational companies, serve the interest of their friends.

Here, one body could not perform and now they have a Board of 62 members. They could not provide 10 or 15 members, but now they have a 62-member Board for a country like India, belonging to different parts. They have set up a Board of 62 members.

SHRIMATI MARGARET ALVA : That is the retirement benefit scheme for the bureaucrats.

SHRI RUPCHAND PAL : Now, many will become one. It is just like a philosophical thing. What is the benefit? I am giving a comparison of timeframe. The timeframe under SICA: Techno-economic viability study of the sick industrial company – two to three months; preparation for implementation of the scheme for rehabilitation with the assistance of operating agencies – one month; draft scheme – three to six months; total – 12 to 22 months; and the total time given is 390 days. I think, 390 days is more than one year, if I am not mistaken. How do they calculate? That also is amazing. It is simple arithmetic. I do not know what this Government proposes to do. I am totally confused. Their own partner is complaining against them that they are beating their own people.

On their own disinvestment process, their own Ministers are coming out that there is corruption and that they do not subscribe to that. It is simple arithmetic and they are calculating this way. I am really amazed. Moreover, whether they are running this Government at all or not, I do not know.

They want to set up a fund, the formation of which will be done by levying cess. What for is this? It is for rehabilitation and revival of assets of the sick industrial companies, a levy at a rate of not less than .005 per cent. They will manage the fund. More than four lakh units have become sick because of their policy. Because of the wrong form of malfunctioning, maladministration, collusion with unscrupulous operators and promoters, daily new companies are becoming sick.

We have stated that let us debate, discuss thoroughly in a transparent manner. Let us find out the reasons for the sickness. Some of them are extraneous because of their wrong policy, WTO requirements demand - recession. Each individual unit should be protected with the right and timely help. We have seen. I can give you two-three examples. Three banks, namely, the Indian Bank, the United Commercial Bank and the United Bank were considered to be the sick banks.

MR. DEPUTY-SPEAKER: Shri Pal, your party is allotted only seven minutes and you have taken more than three times of it.

SHRI RUPCHAND PAL : I am concluding.

It has been said. What they considered to be sick would have given better results if they were given the right and adequate help. There have been cases of excellent turn around. So, each unit should be considered on its merits.

They should withdraw this Bill. Rather, they should go back and consider the merits of the 1997 Bill. They should wait till the recommendation of the other Standing Committee on the SICA Repeal Bill comes. That recommendation should not be treated in a manner which is being done right now.

I, once again, oppose the Bill. In the interest of the workers of this country and in the interest of the industries of the country, they should not proceed with this sort of a disastrous piece of legislation.

DR. B.B. RAMAIAH (ELURU): Hon. Deputy Speaker, Sir, the Companies (Amendment) Bill is brought as part of the constant effort of the Government to see that we have to improve the conditions of various aspects in view of the various changes in the industrial development and in view of the various economic factors of this country.

The other day we also discussed the Securitisation and Reconstruction of Financial Assets Bill. That was brought up because of the huge NPAs that the banks and other financial institutions had accumulated. Even at that time, I also mentioned about the reasons why it happened, the reasons for the sickness of the industry and how this has to be solved. It is not only the affairs of this country but also it happened all over the world, including in the developing countries. That is the reason why, I think, the hon. Finance Minister has come out with this Bill. It is a step forward, but still we have to go a long way. Even the BIFR and the AAIFR are not able to find a solution to this problem that we are having today.

But the creation of the National Law Tribunal as an apex body, which is a step forward, is to see how it should be done in a simplified way and how this has to be solved while keeping in view the various issues of the industrial sickness. But it also requires a lot of expertise in the financial institutions. The lenders should also have the people who can guide properly before they face any drawbacks in a particular project. That will help us. They are the

people who should be able to take the initiative. They are the people who will see whether through mergers and collaboration it can be done much faster rather than going to the Tribunal.

### 15.12 hrs (Shrimati Margaret Alva in the Chair)

Of course, whatever type of law we may put in the Tribunal, it will consume a lot of time. It will make a lot of delays in various aspects and the revival of the industry will take a lot of time. However, I feel, we have also made a lot of liberalisation in the various aspects, like, the stock markets are taken over by the SEBI which is a separate organisation. It will reduce the workload of the Company Law Board. So, they would concentrate and see that only development aspects of the industry should be considered more actively. It should give more thrust for simplified methods. It should take initiatives for advancement of all these things.

I know the main purpose is to see that we should not create more idle capacities and unemployment but we should see that maximum utilisation should be done in the best interest of the country's development. Of course, we are all talking of another item, what is called, 'co-operative banks'. Somehow the societies also want to become a part of the companies law system and they want other things also. That is also coming as a general amendment. Various other things are coming. But, in any case, this is a step forward and we definitely support it.

As the other hon. Members also said, there are recommendations. We have to improve the various aspects of the recommendations. But we have to go step by step.

As Shri Rupchand Pal says, globalisation or WTO has something to do with this. But every step has to go further. We are not being isolated in the world, but in this sector, when we have to be on par with the rest of the world, we have to face some problems. In order to resolve this, to suit to our conditions, we have to make some amendments towards positive directions. However, we must do it. Maybe, some flaws are there. It is the constant affair of the Ministry and the Government to bring it before the Parliament. By more and more amendments, they should see that they should be able to regularise this. The loopholes can be plugged as far as possible in the best interest of the development of this country. I, once again, thank the hon. Finance Minister for bringing up this law. Still we have to go a long way. We have to do a lot more things. I thank you once again.

**डॉ. रघुवंश प्रसाद सिंह (वैशाली) :** सभापति महोदय, माननीय मंत्री जी ने कंपनी (संशोधन) विधेयक, 2001 सदन में प्रस्तुत किया है। यह विधेयक एक कमेटी में विचारार्थ लम्बित था और उस कमेटी ने अनुशंसायें की हैं, इसलिए यह विधेयक लाया गया है। इससे अगला विधेयक है, जिस पर सदन में विचार होना है, वह है - कंपनी (दूसरा संशोधन) विधेयक, 2001. कम्पनी कानून में काफी जंजाल है और हेरा-फेरी हो रही है, लेकिन अब भेद खुलेगा। माननीय मंत्री जी ने दावा किया है कि कम्पनी के मामले में हेरा-फेरी से बचने के लिए श्री बालकृष्ण इरेडी, सुप्रीम कोर्ट के रिटायर्ड जज की अध्यक्षता में यह कमेटी बनी थी। उन्होंने जो सुझाव दिए हैं, अनुशंसायें की हैं, उनके अनुसार कानून में संशोधन करने के लिए यह विधेयक लाया गया है।

इस बिल के संबंध में माननीय सदस्य, श्री रूपचंद पाल जी ने सभी कागज-पत्रों को देखा है, लेकिन उन कागजों में रिवाइवल की बात ही नहीं है। ये कम्पनी वाले धनपशु लोग हैं, जो जाली कम्पनियां बनाकर, दिवालिया निकाल कर और बैंक से पैसा लेकर गायब हो जाते हैं। फिर कहा जाता है कि मामला BIFR, AAIFR, SICA आदि विभिन्न जो संस्थायें हैं, उनमें विचार के लिए गया है, लेकिन इन संस्थाओं ने बेरोजगारी दूर करने के लिए कुछ नहीं किया है। यह सवाल बराबर उठाया गया है कि BIFR को बन्द किया जाए, कारण यह कि वर्कर्स मरते रहते हैं, उनको भुगतान नहीं होता है। आफिशियल लिक्विडेटर बहाल कर दिया है और मामला बरसों तक चलता रहता है। कोर्ट में भी लोग परेशान होते रहते हैं। मैं एक रिपोर्ट का जिक्र करना चाहता हूँ, जिसमें कहा गया है कि सुप्रीम कोर्ट में एक लाख 21 हजार, हाई कोर्ट में 3.4 मिलियन यानि 30 लाख 40 हजार केसेज पेंडिंग हैं। Pending cases in lower courts have been stagnant at 20 million for the past five years, he said, the judicial delivery system has to be streamlined by cutting down on procedures. Procedures have to be shortened and processes compressed for delivery of justice in a time frame. कम्पनियां सिक हो जाती हैं, दिवालिया घोषित कर देती हैं और वाइंड-अप करने के लिए प्रोसेस शुरू हो जाता है। स्थिति यह होती है कि कामगारों को वेतन नहीं मिला होता है और जब मामला कोर्ट में जाता है, तो कामगार भुखमरी के शिकार हो जाते हैं और केस का निपादन नहीं होता है। मामला कोर्ट में लम्बित रहता है। अब सरकार ने दावा किया है कि इरेडी कमेटी ने जो अनुशंसायें की हैं, उनसे कम्पनी को रिहैबिलिटेट करेंगे। यह भी कहा गया है कि यह वर्कर्स के हित में भी होगा। "वि कुम्भम् पयोमुखम्" - ऊपर से तो मीठी-मीठी चीज लगती है, लेकिन भीतर उसके वि है। सरकार ने दावा किया है कि इस विधेयक के पास होने से रिहैबिलिटेशन हो जाएगा। स्थिति यह है कि सरकारी कम्पनियों को रिवाइव करने के बजाए बेच रहे हैं। इस संबंध में रोज सवाल उठाए जा रहे हैं, लेकिन सरकार द्वारा कहा जा रहा है कि वर्कर्स के इन्टरैस्ट में यह विधेयक लाया गया है। जब भी सरकार से कहा गया है कि कामगारों को वेतन नहीं मिल रहा है, तो यही जवाब दिया जाता रहा है कि मामला BIFR को भेजा गया है। बिहार में शुगर मिल कार्पोरेशन के अधीन चीनी मिलें हैं और केन्द्र के अधीन भी कुछ मिलें हैं, अब दोनों के लिए प्रावधान किया गया है कि केन्द्र का आदेश लागू होगा।

वहां 15 चीनी मिलें वॉ से बंद हैं। लोग मरने लगे, इसलिए वे कोर्ट में गए। कोर्ट ने सरकार से, कार्पोरेशन से कहा कि वेतन भुगतान कीजिए, अन्यथा वाइंड अप का प्रोसिजर होगा। यह 1997 में हुआ। उसके बाद भी जब कार्यवाही नहीं हुई तो कोर्ट ने कहा कि कंटेन्ट करेंगे। फिर जल्दी-जल्दी में उस पर लिख दिया गया, उसे वाइंड अप किया और ये लोग बेखबर हो गए। उधर उसे आईडीबीआई और आईएफसीआई रिहैबिलिटेट करने के लिए कार्यवाही कर रही थी। लिखा-पढ़ी हो रही थी, शर्तों का निर्धारण हो रहा था कि किस आधार पर बंद चीनी मिलों को चालू किया जाए। अब इनमें भी दो तरह के आदेश हैं। किसान चाहते हैं कि इसे चालू होना चाहिए और उसमें जो कार्यरत मजदूर हैं, उनका भी कार्य चालू रहना चाहिए तथा उन्हें वेतन मिलना चाहिए, यानी दोनों के इंटरेस्ट पर कुठाराघात हुआ। यह किस लिए रिवाइव होगा, वह वाइंड अप में चला गया। 10-12 वॉ वाइंडिंग में लगते थे। इन्होंने दावा किया है कि लॉ में दो वॉ के अंदर इसे वाइंडअप कर देंगे और उसका सब प्रोसिजर पूरा कर देंगे। इन्होंने 62 सदस्य रखे हैं, जो नेशनल कम्पनी लॉ ट्रिब्यूनल बनाएंगे। इसमें मल्टीनेशनल्स का भी दबाव था कि जल्दी करिए। रिपोर्ट आई है कि मल्टीनेशनल का दबाव था कि जल्दी करिए। फिक्की वाले बेचैन थे। सीआईआई, एस्सोचेम, सारे लोग दबाव डाल रहे थे कि जल्दी कीजिए। सब लोगों ने बहुत खुशी जाहिर की और आप लोगों ने भी खुशी जाहिर की।

महोदय, ये अब कहते हैं कि हम रिहैबिलिटेशन के लिए फंड भी रखेंगे। एम्स एंड ऑब्जेक्ट्स में जो कुछ कहा गया है, वह यदि हो जाए तो खुशी की बात है। लेकिन

हम लोगों को इस पर पूर्ण संदेह है कि किस आधार पर औने-पौने दाम में, बिना ट्रांसपेरेंसी के सरकारी कम्पनियां बेच रहे हैं। उस पर हम लोग एजिटेड कर रहे हैं और जो प्राइवेट कम्पनियां हैं, वे कितनी हेरा-फेरी करके एनपीए में रन कर रही हैं। कुछ रूपया मार दिया या कोई अन्य बात हो गई तो उसका नाम बदल दिया। उसका नाम एवं बोर्ड दूसरा, तीसरा हो गया। कम्पनी लॉ में बड़ा भारी जंजाल है। अगर ये पहले ही दिवालिए वाला कानून लाएंगे, सिका, बीआईएफआर वाला कानून खत्म करेंगे, उसमें जो प्रोसिजर है, सिक इंडस्ट्रियल एक्ट में जो प्रावधान है, उन सब को खत्म करने का दावा किया कि हम इन सब को खत्म करेंगे और नया नेशनल कम्पनी लॉ बोर्ड बनाएंगे, जिसमें 62 सदस्य होंगे। उसमें बैंक वगैरह भी होगा। इन्होंने दावा किया है, लेकिन हम लोगों को इसमें बहुत आशंका लगती है। इराडी साहब रिपोर्ट दे गए और इन्होंने उसे अपनाया। हम लोग चाहते हैं कि सरकार सही मायनों में बताए कि जो कम्पनियां दिवालियां हो गईं, वे क्यों हुईं। क्या हेरा-फेरी हुई और उसमें क्या गड़बड़ी हुई? उसके कारणों का समाधान हो, लेकिन ऐसा नहीं हो रहा है। उसके कारणों का समाधान हो, उसका मैनेजमेंट दुरुस्त हो तथा उस पर ये ठीक ढंग से चलें, लेकिन ऐसा नहीं हो रहा है। उसे बेचने का काम ये लोग शुरू करा देते हैं। जैसे गांव वगैरह में हम लोग देख रहे हैं कि जब गरीबी आदि आती है तो वे अपने खेत बेचने लगते हैं, वही इस सरकार का धंधा हो गया है। इसलिए हम लोगों को पूरा संदेह है।

महोदय, मंत्री जी सदन को साफ तौर पर बताएं कि आप रिहैबिलिटेशन कैसे कराएंगे? सब कम्पनियां हेरा-फेरी कर रही हैं, उन पर आप कैसे नियंत्रण करेंगे? जो कम्पनी दिवालिया हो गई, सिक कम्पनी बीआईएफआर में गई, ये सब खत्म होने में दो वा लगे तो वर्कर्स का कैसे भला होगा। दो वा तक उसका वेतन बंद रहेगा तो वह कैसे खाएगा। जो वेतन भोगी लोग हैं उन्हें अगर एक महीने वेतन नहीं मिलता तो उनके लिए बहुत मुश्किल हो जाती है। ये कहते हैं कि हम 12-15 वा की अवधि कम करके दो वा लाएं हैं, लेकिन इसमें भी हम लोगों को संदेह है कि क्या वर्कर्स का हित हो पाएगा। जो दिवालिया कम्पनी और सिक यूनिट हो जाती है, उसके कारणों की जांच होनी चाहिए।

कारणों की जांच में सावधानी बरतनी चाहिए और जिन उद्देश्यों के लिए कंपनियों का गठन होता है वे उद्देश्य पूरे होने चाहिए। आज हालत यह है कि वे उद्देश्य पूरे नहीं होते और देश का पैसा लूटा जाता है। इन सभी बातों को माननीय मंत्री जी साफ तौर पर बताएं, नहीं तो हम इसका भारी विरोध करेंगे। मजदूरों के रिहैबिलिटेशन और बेरोजगारी की समस्या के बारे में भी मंत्री जी बताएं कि वे इसे कैसे दूर करेंगे। होना यह चाहिए कि रोजगार बढ़े, उत्पादन बढ़े और देश तरक्की करे।

अभी माननीया रेणुका चौधरी जी ने बताया कि चीन से सामान सस्ते मूल्य पर आयात होकर आ रहा है। जब बाहर का सामान सस्ता मिलेगा तो देश का लघु उद्योग मर जाएगा। देश के छोटे और मझौले उद्योग फिर कैसे बचेंगे? चीन से आने वाली, गणेश जी की, बिजली से चमकने वाली मूर्ति 50 रुपये में मिल रही है जबकि देश में बनने वाली मूर्ति 500 रुपये में मिलती है। अगर ऐसा होगा तो यहां का लघु उद्योग मर जाएगा। इन सब बातों पर मंत्री जी प्रकाश डालें और हमें साफ-साफ तौर पर बताएं।

**सभापति महोदय (श्रीमती मार्ग्रेट आल्वा) :** महिलाओं की बिंदी भी चीन से आ रही है।

Shri Kharabela Swain. You have to be quick because we are running out of time.

SHRI KHARABELA SWAIN (BALASORE): Madam, I shall be very brief. Actually, I wanted, as per the appeal of the Finance Minister, this Bill to be passed without any discussion. I rise to support this Bill.

Madam, you have already heard the presentations made by hon. Shri Rupchand Pal and hon. Dr. Raghuvansh Prasad Singh. They do not believe in anything. They purely believe in the conspiracy theory every time, and if you go through their speeches, you will not find a single suggestion being given. Everything was suspected. Now, since this Bill has been prepared as per the recommendations of the Eradi Committee and already ratified by the Standing Committee, it may be - as the allegation is made by hon. Shri Rupchand Pal - that in the Terms of Reference of the Eradi Committee, there was no reference with regard to rehabilitation, but I would like to quote from the Statement of Objects and Reasons of this Bill. Para 3(ii) of the Statement reads :

"All the parties will be bound by the Tribunal's orders and in case of non-availability of workable proposal for revival or rehabilitation etc., the Tribunal can decide the matter on merits, including introduction of its own scheme."

That means that if the entrepreneur or the owner of a company which is going to be liquidated goes to the new NCLT, he will have to go along with a revival proposal. So, the revival proposal is the most important thing in this Bill. Therefore, it is not correct to say that there is nothing in this Bill with regard to the revival proposal. Everything is there in the Bill. This Bill is specifically for that purpose.

Now, I will just make the final point. You just go through the international practice. You just go through the practice in Australia, Indonesia, Singapore or Japan and you will find that now the jobs of rehabilitation and winding up are combined together. One institution goes for these two things. It should not be compared with the division of UTI. The case of UTI is totally different. The case, which we are just deliberating on, is something very different from that. So, if one organisation looks into rehabilitation as well as winding up, it can do better justice than an organisation like BIFR. So, I fully agree with this Bill. The new NCLT will be a combination of Company Law Board, BIFR, AAIFR and High Court. I also agree that there is no institution which is hundred per cent perfect.

Maybe, there might be some flaws here, which we can find out in future and which we can rectify, but I do not agree with the argument that NCLT will have the same fate as BIFR, which was incapable of solving the problems of the workers.

I fully endorse and I fully support this Bill. Even if there are some flaws here and there, the hon. Finance Minister will look into it in future.

**श्री चन्द्रकांत खैरे (औरंगाबाद, महाराष्ट्र) :** सभापति महोदया, आदरणीय मंत्री महोदय कम्पनी अफेयर्स के बारे में जो बिल लाए हैं, मैं शिव सेना की ओर से उसका समर्थन करता हूँ। इस बिल पर स्टैंडिंग कमेटी में चर्चा हुई थी इसलिए यहां इस पर ज्यादा चर्चा करने की आवश्यकता नहीं है लेकिन कुछ बातों का कम्पनी अफेयर्स डिपार्टमेंट को ख्याल करना चाहिए। कोई भी कम्पनी फॉर्म होती है वह चलती है या नहीं उस पर कंट्रोल केन्द्र सरकार का तो होता है लेकिन उस पर केन्द्र सरकार का ज्यादा से ज्यादा कंट्रोल होना चाहिए। बहुत से लोग कम्पनियां बनाते हैं, वहां फर्जी डायरेक्टर रखते हैं। वे लोगों को लुभाने के लिए तरह-तरह की बातें करते हैं। फिर दूसरी कम्पनी बना लेते हैं। जो कम्पनियां लिक्विडेशन में आती हैं, उनके बारे में यहां कई बार चर्चा हुई। जो कम्पनियां लिक्विडेशन में आती हैं, उनके सामने तीन-चार समस्याएं आती हैं। वहां कभी कामगार की समस्या आती है, कभी भाई-भाई का झगड़ा होता है, कभी डायरेक्टर्स में झगड़ा होता है, कभी रॉ-मैटिरियल नहीं मिलता। कभी-कभी उनका सामान सेल नहीं होता है।

अभी सभापति महोदया ने बताया कि बिंदी भी चीन से आ रही है जो बड़ी चिन्ता की बात है। डबल्यूटीओ पर हस्ताक्षर करने के कारण हमारी कम्पनियां बंद होती जा रही है। इसमें भी गड़बड़ करने वाली कई कम्पनियां हैं। वे चार-पांच अलग-अलग कम्पनियां बना लेते हैं। मेरे चुनाव क्षेत्र में एक ऑटोमोबाइल प्रोडक्ट्स आफ इंडिया नाम की एक कम्पनी है। इसके चेयरमैन और मैनेजिंग डायरेक्टर फिक्की के बड़े पदाधिकारी हैं। कल हमारे मंत्रीगण वहां जाने वाले हैं। उस कम्पनी का प्रोडक्ट मनोंपली आइटम्स है। क्लच और ब्रेक का मनोंपली आइटम्स होने के बाद भी उन्होंने कहा कि कम्पनी लॉस में जा रही है। वहां के बहुत से कामगार बेकार हो गए हैं। उस कम्पनी के जिन अधिकारियों को 7-8 हजार रुपए महीना तनखाह मिलनी चाहिए, केवल एक हजार रुपए ही मिल रहे हैं। हमने इस बारे में कई बार मंत्री जी से आग्रह किया। आदरणीय मनोहर जोशी जब उद्योग मंत्री थे, हमने उनसे भी इस बारे में कहा था और उन्होंने फोन भी किया था लेकिन कोई सुनवाई नहीं हुई। आपका ऐसी कम्पनियों पर कंट्रोल रहेगा या नहीं? यदि ऑटोमोबाइल प्रोडक्ट्स ऑफ इंडिया कम्पनी लॉस में होगी तो उसकी सिस्टर कनसर्न में जो डायरेक्टर्स होंगे, उनकी जिम्मेदारी होगी या नहीं? इस पर कम्पनी अफेयर्स डिपार्टमेंट का कंट्रोल होना चाहिए। बीआईएफआर में जाने के बाद भी केस चलता रहता है। इसमें इतनी अधिक समस्याएं हैं। वे फर्जी कम्पनियां और डायरेक्टर्स बनाते हैं जबकि उनकी सिस्टर कनसर्न अच्छी चल रही हैं। ....(व्यवधान) पेपर्स में दिखाते हैं कि कम्पनी लॉस में है और कह देते हैं कि हम कुछ नहीं कर सकते। इससे कामगार बेकार हो जाते हैं। उनकी सिस्टर कनसर्न कम्पनियां जो प्रॉफिट में हैं, वे वहां से पैसा नहीं निकालते हैं लेकिन एक और कम्पनी निकालने के समय प्रॉफिटेबल कम्पनी के शेयर उसमें डालते हैं। वे कैसे डालते हैं? इस पर कोई कार्रवाई होनी चाहिए।

कामगारों के बारे में जो सवाल रूपचन्द्र पाल जी और रघुवंश बाबू ने उठाया, उस पर गम्भीरता से विचार होना चाहिए। कम्पनियों के खर्चे इतने ज्यादा हैं कि वे लॉस दिखा देते हैं। अफसरों के बंगलों, रहन-सहन और पार्टियों का खर्चा बहुत अधिक होता है। वे ऑफिसर्स को पार्टियां रोज-रोज देते हैं। मैं यहां माननीय मंत्री जी का बहुत अभिनन्दन करूंगा। हम मराठवाड़ा की एक इंडस्ट्री की एसोसिएशन के कार्यक्रम में उनको ले जाने वाले थे लेकिन उन्होंने मना कर दिया और कहा कि अभी बजट की तैयारी चल रही है। हमारे इतने अच्छे मंत्री हैं। उन्हें इन सब बातों के बारे में सोचना चाहिए और ऐसे अफसरों को निर्देश देना चाहिए। जो फर्जी कम्पनियां लाकर उसे लॉस में लाते हैं, उनके डायरेक्टर वही होते हैं, जो प्रॉफिट वाली कम्पनी के होते हैं, और इसमें बैंकों को भी बहुत लोग डुबा देते हैं। ऐसे डायरेक्टर्स पर कम्पलीटली अंकुश लगना चाहिए और उनकी प्रोपर्टी वगैरह सब चीजों पर रोक लगनी चाहिए। ये मेरे सुझाव हैं। इसके साथ ही मैं अपनी पार्टी की ओर से इस बिल का समर्थन करता हूँ।

**SHRI JASWANT SINGH:** Madam, Chairman, I am grateful to the hon. Members for the views that they have expressed. At the very beginning, I must share with the hon. Members of the House that this piece of legislation that we are considering is after deliberations by the Standing Committee. I will read out two portions from the recommendations of the Standing Committee. All parties are represented in the Standing Committee. The Report is unanimous. Therefore, the voices of dissent that I have heard is a bit disappointing for me. It is because the recommendation of the Standing Committee is that the Bill be passed after incorporating the amendments suggested and also those agreed to by the Government. As I said at the introduction stage, we have incorporated some of those amendments. The Committee also recommended that the Government shall give due consideration to the fundamental issues raised during the deliberations in the Committee, as contained. The Government fully considered those issues.

Madam, Chairman, let me deal very briefly with the issues raised. Shri Dasmunsi recommended and stressed whether there is a provision for involving the labour. There is no sufficiently clear provision in regard to the trade unions. I think, it is sufficiently clear and at the stage of the rules if any additional clarity is required, that shall be done.

In regard to unfair competition from the Peoples' Republic of China and also dumping of goods -- that word has been used by various hon. Members -- let me point out that firstly we have anti-dumping provisions. The provisions are fairly active. If you study the trade figures between the Peoples' Republic of China and India, then you will find that actually there is greater export from India to China, than there is import from China. It is entirely possible that some illegal trade is taking place in this regard from across the open borders that we have with our neighbour like Nepal. But that illegal trade is also being curbed. Also, it is because of this, what is termed as unfair competition, that we hope to bring in the Competition Bill next week. If the competition is fair, then we have to find ways and means of reducing the cost of production which, of course, covers a much wider field.

**SHRIMATI RENUKA CHOWDHURY :** We do not have a level playing field.

**SHRI JASWANT SINGH:** That is a different debate altogether.

**SHRIMATI RENUKA CHOWDHURY :** That is why our industries cannot compete.

**SHRI JASWANT SINGH:** We are going into an arena which is outside the scope of this present legislation. The differential arises from considerably lower labour cost as it obtained in the Peoples' Republic of China. I feel it is a temporary advantage. As the advancement takes place and movement of labour in China --from coastal China or urbanised and industrialised China -- takes place, then this differential will diminish, particularly after the WTO. I am

confident of that.

If you study the trade figures or the extent of export from India and export from China to India, you would find that there has always consistently, for the last three years, been greater export from India than there has been import from China. But it is a different subject altogether.

SHRI MOINUL HASSAN (MURSHIDABAD): I want to seek a clarification.

MADAM CHAIRMAN : Please do not interrupt the Minister. Let him finish. If you have any questions after that, you can ask.

SHRI JASWANT SINGH: On the question of Appellate Tribunal which hon. Dasmunsi has raised, Clause 10, Sub-Clause (6) provides the indicative time limit of six months.

**Hon. Shri Rupchand Pal spoke with considerable passion but expected dialectical imprecision. His speech was laced with the usual but somewhat unconvincing sarcasm. Of the issues that he raised about this particular legislation in any sense violating the consideration of the SICA Bill by the Standing Committee on Finance, we have said, that is why in this Bill we have provided that different sections will be brought into effect from different dates. The proviso to Clause 1 of the Bill says that. This is also there in the deliberations of the Standing Committee on Finance and I ought not to really refer to it, all this has been adequately explained to the hon. Member.**

The question of labour interests has been raised by a number of hon. Members. Therefore, I must read out what I had not done at the beginning with a view to saving time especially. "It does not firstly impinge on any of the existing laws relating to labour and it also does not contain any provision to repeal any Section of the labour laws but in fact provides the following."

"I have already explained that to make such person eligible to be appointed as Technical Member of the National Company Law Tribunal "â€", that is all there. We will consider the matter of trade unions at the time of framing the rules. Labour as a creditor to the extent of dues payable can also make a reference to the Tribunal in the cases relating to revival and rehabilitation - I will come in a moment to that - or winding up of a company, there shall be a three-member Bench and one of those three members shall be connected with labour laws and be conversant with them. The Revival and Rehabilitation Fund will be used for making interim payment of workers' dues pending the total revival, and the Tribunal shall have power to dispose of the assets of a sick company even during the period of inquiry so as to enable payment to workmen whenever considered necessary.

Madam Chairman, I wish to cover this extensively. On the question of labour, Shri Rupchand Pal has also said that this Bill has spent more time on winding up but not on revival. I am sorry that he has come to that interpretation. In fact, let me read this out. "In cases relating to revival, rehabilitation, winding up...(Interruptions)

SHRI VARKALA RADHAKRISHNAN (CHIRAYINKIL): Madam, I would like to seek a clarification from the Minister.

MADAM CHAIRMAN: Let the Minister finish his speech and then you can ask.

SHRI VARKALA RADHAKRISHNAN : I want a clarification in this context. I will have to raise a very important issue. If you permit me, I will ask.

MADAM CHAIRMAN: If the Minister permits you, you can ask.

SHRI VARKALA RADHAKRISHNAN : The most important thing is 'delay'. We want to prevent delay. I am not considering globalisation; it is not the issue here. Delay is the most important thing in all these matters. BIFR was not working for a long time and decisions were taken after so many years.

MADAM CHAIRMAN : Now, please ask the clarification.

SHRI VARKALA RADHAKRISHNAN : I am coming to that. The *quasi judicial* authorities were dealing with all these matters. Now, Mr. Minister, you have given all the powers to the National Tribunal. How would you prevent the delay?

SHRI JASWANT SINGH: I will come to it in a minute.

In fact, I will explain how there has been a distinct improvement.

SHRI VARKALA RADHAKRISHNAN : I am talking about delay.

SHRI JASWANT SINGH: I have understood. You are talking about delay. It spells d-e-l-a-y.

SHRI VARKALA RADHAKRISHNAN : There were *quasi judicial* authorities.

MADAM CHAIRMAN: Shri Varkala Radhakrishnan, he has understood your question. He will answer it. Please be patient.

SHRI JASWANT SINGH: I will explain this in a minute.

Madam, I was on the question of revival and rehabilitation. There is a proposal to establish a Revival and Rehabilitation Fund. Therefore, it is incorrect to say there is no emphasis on revival or rehabilitation.

The revival cess will not be less than 0.005 per cent and not more than 0.1 per cent of the annual turn over of each company which is paying it. The Fund shall be applied by the Tribunal for the purpose of making interim payment of workmen' dues or rehabilitation of the sick industrial companies, or payment of workmen' dues to the workmen or protection of assets or revival or rehabilitation of sick industrial company, which in the opinion of the Tribunal, are unnecessary or expedient for the said purpose. Therefore, I do not wish to dwell much longer on that.

Hon. Member, Shri Rupchand Pal has also spoken about the question of 63 members....(*Interruptions*)

SHRI VARKALA RADHAKRISHNAN : It has 62 members.

SHRI JASWANT SINGH: I think the number is 63 but if you say it as 62, I will accept it.

MADAM CHAIRMAN : Otherwise, it is 63.

**SHRI JASWANT SINGH: The question is, in an unconvincing sarcasm, Shri Rupchand Pal was asking as to how these 63 members will be appointed. It is quite clear because the Tribunal will be spread over a number of States. It is not as if in one Tribunal there will be 63 Members. We are spreading the Tribunal over a number of States. A number of States are involved because the industrial units are spread over a number of States.**

The question of delay is a matter of great concern to all.

SHRI VARKALA RADHAKRISHNAN : What about NPA?

SHRI JASWANT SINGH: NPA is a different kind of delay.

We were queried as to why we are making it as 240 days. These 240 days is an improvement to 12 to 22 months in the existing scheme. So, we are actually moving from a scheme or a provision which has the time lag of about 12 to 22 months – 390 days as against 22 months. Also, in the earlier open-ended provisions in SICA, we had Section 18 (3) (a). Therefore, every care has been taken to actually cut down delay and we will continue to endeavour in the operation of the Bill to further improve and cut down delay as much as possible.

I think I have covered all the issues. I would, therefore, now recommend that this Bill meets the assent of the House.

SHRI MOINUL HASSAN : With your permission, I have one clarification to seek. When we refer about the trade-sharing between China and India, it is a fact that so far as trade-sharing is concerned, India is on a higher side. Illegal trade practices are going on in the border areas. I would like to know from the Minister what action has been taken by the Government to stop this illegal trade practice.

MADAM CHAIRMAN: This is the last clarification.

SHRIMATI RENUKA CHOWDHURY : I wanted to draw hon. Minister's and this House's collective thought to the fundamentals of why we have problems in industry. Right from the time we go for a loan, there is corruption in our State Financial Corporations whereby we have to give a percentage of the loan we take, in order to receive loan. After that, even an SSI unit has to go to 13 windows for clearance of licence. Unless you have a single-window clearance as well as time-bar procedures, the industrialist will start with a deficit. At the same time, we get loans at higher percentage of interest than anywhere in international community. Halfway through, our production projections and overheads shift because the State Government decides to impose Rs.7.50 per unit on power. This is what we are facing in Andhra Pradesh. So, not even in our dreams we can match with our imports. Unless you have a special hedge for SSI and medium industry, in today's open trade policy that we are practising, we can write off India's industrial sector.

When you are approaching the Budget, if you are looking at the Budget proposals as mopping up revenue and you impose excise duty on our industries only with a view to mopping up revenues, then it may as well end up as our nooses.

**MADAM CHAIRMAN : They are not interested in small scale sector. They are interested only in**

**multinationals and big companies.**

SHRI JASWANT SINGH: As far as the first query as to what the Government is doing to curb smuggling over the border, the hon. Member knows that very many actions have already got taken. Smuggling across the border is really an issue which we are faced with in the northeast, more particularly on the border that adjoins Nepal. A number of steps have already been taken, like the limited number of access routes. It is an open border and the scheme is, citizens of those countries do not require passport. As the hon. Member knows, they are even employed here. The citizens of Nepal and Bhutan can join Services in India. They can join any organisation including the Armed Forces, except the Indian Foreign Service, for some reasons. So, these are advantages for which we have some accompanied disadvantages.

So far as hon. Member's query is concerned, it really relates to the functioning of the State Financial Corporations. She would appreciate that it will be improper for me to comment on that....(*Interruptions*)

SHRIMATI RENUKA CHOWDHURY : I understand your delicacy in not mentioning Andhra Pradesh.

SHRI JASWANT SINGH: I am in agreement with her that the bureaucratic tangle that normally confronts an investor is really amongst the most formidable barriers to investment. I totally accept that and this is something that all of us collectively, irrespective of where we sit in the House, should address. It is like a tangle web....(*Interruptions*)

SHRI SOMNATH CHATTERJEE (BOLPUR): We do not discuss such issues here. They would lead to problem....(*Interruptions*)

**MADAM CHAIRMAN: But they are the ones who will run on your panels after retirement.**

SHRI JASWANT SINGH: As far as the Budgetary matters are concerned, if I would say either way, the very next day all of you will speak about the privilege of the House. So, I better keep quiet.

MADAM CHAIRMAN : The question is:

"That the Bill further to amend the Companies Act, 1956, be taken into consideration. "

*The motion was adopted.*

*MADAM CHAIRMAN: Now, the House will take up clause-by-clause consideration of the Bill.*

**Clause 2 – Amendment of Section 2**

*Amendments made:*

*Page 2, line 11, for "reserves", substitute "reserves after deducting the provisions or expenses as may be prescribed.". (3)*

*Page 2, line 29, for "such financial years" substitute "such financial year" (4)*

*Page 2, line 31, for "demand" substitute "demand made in writing" (5)*

(Shri Jaswant Singh)

MADAM CHAIRMAN: The question is:

"That clause 2, as amended, stand part of the Bill."

*The motion was adopted.*

*Clause 2, as amended, was added to the Bill.*

**Clause 3 – Amendment of Section 10E**

***Amendment made:***

**Page 2, line 45, for "Companies (Amendment) Act, 2001" substitute  
"Companies (Second Amendment) Act, 2002" (6)**

(Shri Jaswant Singh)

MADAM CHAIRMAN: The question is:

"That clause 3, as amended, stand part of the Bill."

*The motion was adopted.*

*Clause 3, as amended, was added to the Bill.*

**Clause 4 – Amendment of Section 10F**

***Amendment made:***

**Page 2, line 48, for "Companies (Amendment) Act, 2001" substitute  
"Companies (Second Amendment) Act, 2002". (7)**

(Shri Jaswant Singh)

MADAM CHAIRMAN: The question is:

"That clause 4, as amended, stand part of the Bill."

*The motion was adopted.*

*Clause 4, as amended, was added to the Bill.*

**Clause 5 – Insertion of new section 10FA**

**Dissolution of company Law Board**

***Amendment made:***

**Page 3, lines 3 and 4, for "Companies (Amendment) Act, 2001"  
substitute "Companies (Second Amendment) Act, 2002" (8)**

(Shri Jaswant Singh)

MADAM CHAIRMAN: The question is:

"That clause 5, as amended, stand part of the Bill."

*The motion was adopted.*

*Clause 5, as amended, was added to the Bill.*

**Clause 6 - Insertion of new Parts 1B and 1C**

**Amendment made:**

Page 4, line 5 for "who is, or has been", substitute "who has been". (9)

Page 4, lines 15 to 17, substitute –

"(c) has held for at least fifteen years a Group 'A' post or an equivalent post under the Central Government or a State Government [including at least three years of service as a Member of the Indian Company Law Service (Legal Branch) in Senior Administrative Grade in that service]; or" (10)

Page 4, for lines 18 to 20, substitute –

"(d) has held for at least fifteen years a Group 'A' post or an equivalent post under the Central Government (including at least three years of service as a Member of the Indian Legal Service in Grade I of that service)". (11)

Page 4, for lines 23 to 25, substitute –

"(a) has held for at least fifteen years a Group 'A' post or an equivalent post under the Central Government or a State Government [including at least three years of service as a Member of the Indian Company Law Service (Accounts Branch) in Senior Administrative Grade in that service]; or"  
(12)

Page 4, line 27, for , "under the Central Government"

*substitute "under the Central Government or a State Government" (13)*

Page 4, line 40, for, "fifteen years" substitute "twenty years" (14)

Page 5, line 8, for "enters upon his office.", substitute "enters upon his Office, but shall be eligible for re-appointment:". (15)

Page 5, after line 12, insert

"Provided further that the President or other Member may retain his lien with his parent cadre or Ministry or Department, as the case may be, while holding office as such.". (16)

Page 5, for lines 13 to 20, substitute

Financial  
and administrative  
powers of  
Member  
Administration.

10FF. The Central Government shall designate any Judicial Member or Technical Member as Member Administration who shall exercise such financial and administrative powers as may be vested in him under the rules which may be made by the Central Government:

"Provide that the member Administration shall have authority to delegate such of his financial and administrative powers as he may think fit to any other officer of the Tribunal subject to the condition that such officer shall, while exercising such delegated powers continue to act under the direction, superintendence and control of the Member Administration."

(17)

Page 5, *for* lines 21 to 26, *substitute*"

"Salary  
allowances and  
other terms and  
conditions of  
service of  
President and  
other members.

10FG. The salary and allowances and other terms and conditions of service of the President and other Members of the Tribunal shall be such as may be prescribed:". (18)

Page 6, *omit* lines 12 and 13. (19)

Page 6, line 14, *omit* "further" (20)

Page 6, lines 32 and 33, *for* ""President or the Member, as the case may be", *substitute* "Member Administration". (21)

Page 7, line 2, *for* "at least ten" *substitute* "one or more". (22)

Page 7, *after* line 6, *insert*"

"Provided that in case a Special Bench passes an order in respect of a company to be wound up, the winding up proceedings of such company may be conducted by a Bench consisting of a single Member.". (23)

Page 7, *omit* line 18. (24)

Page 7, line 19, *for* "(7)" *substitute* "(6)" (25)

Page 8, lines 33 and 34, *for* "who is, or has been", *substitute*

"who has been," (26)

Page 8, *for* lines 35 to 37, *substitute* –

"(3) A Member of the Appellate Tribunal shall be a person of ability, integrity and standing having special knowledge" (27)

Page 8, line 38, *for* "twenty-years" *substitute* words "twenty-five years" (28)

Page 9, *omit* lines, 34 to 37. (29)

Page 10, *for* lines 1 to 8, *substitute* –

"10FW (1) The salary and allowances and other terms and conditions of service of the Chairperson and other Members of the Appellate Tribunal shall be such as may be prescribed:". (30)

Page 10, line 9, *for* "(4)" *substitute* "(2)". (31)

**Page 10, line 16, *for* "Finance" *substitute* " Finance and  
Company Affairs" (32)**

Page 10, line 19, *for* "Law, Justice and Company Affairs" *substitute* "Law and Justice" (33)

Page 10, lines 22 and 23, *for* "Ministry of Law, Justice  
and Company Affairs" *substitute* "Ministry of Finance and  
Company Affairs" (34)

(Shri Jaswant Singh)

MADAM CHAIRMAN: The question is:

"That clause 6, as amended, stand part of the Bill."

*The motion was adopted.*

*Clause 6, as amended, was added to the Bill.*

**Clause 7 -- Substitution of new section for**

**Section 17**

*Amendment made:*

*Page 13, for lines 3 to 44, substituteâ€”*

"Special  
resolution and  
confirmation by  
Central  
Government  
required for  
alteration of  
memorandum.

17. (1) A company may, by special  
resolution, alter the provisions of its  
memorandum so as to change the place of  
its registered office from one State to  
another, or with respect to the objects of  
the company so far as may be required to  
enable itâ€”

- a. to carry on its business more economically or more efficiently; or
- b. to attain its main purpose by new or improved means; or
- c. to enlarge or change the local area of its operations; or
- d. to carry on some business which under existing circumstances may conveniently or advantageously by combined with the business of the company; or

- e. to restrict or abandon any of the objects specified in the memorandum; or
  - f. to sell or dispose of the whole or any part of the undertaking or of any of the undertaking, of the company; or
  - g. to amalgamate with any other company or body of persons.
1. The alteration of the provisions of memorandum relating to the change of the place of its registered office from one State to another shall not take effect unless it is confirmed by the Central Government on petition.
  2. Before confirming the alteration, the Central Government must be satisfied-
    - a. that sufficient notice has been given to every holder of the debentures of the company, and to every other person or class of persons whose interest will, in the opinion of the Central Government, be affected by the alteration; and
    - b. that, with respect to every creditor who, in the opinion of the Central Government, is entitled to object to the alteration, and who signifies his objection in the manner directed by the Central Government, either his consent to the alteration has been obtained or his debt or claim has been discharged or has been determined, or has been secured:

Provided that the Central Government may, in the case of any person or class of persons, for special reasons, dispense with the notice required by clause (a).

1. The Central Government shall cause notice of the petition for confirmation of the alteration to be served on the Registrar who shall also be given a reasonable opportunity of appearing before the Central Government and state his objections and suggestions, if any, with respect to the confirmation of the alteration.
2. The Central Government may make an order confirming the alteration on such terms and conditions, if any, as it thinks fit, and may make such order as to costs as it thinks proper.
3. The Central Government shall, in exercising its powers under this section, have regard to the rights and interests of the members of the company and of every class of them, as well as to the rights and interests of the creditors of the company and of every class of them.
4. The Central Government may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Central Government for the purchase of the interest of dissentient members; and may give such directions and make such orders as it thinks fit for facilitating, or carrying into effect, any such arrangement:

Provided that no part of the capital of the company may be expended for any such purchase."  
(35)

Page 14, *omit* lines 1 and 2 (36)

(Shri Jaswant Singh)

MADAM CHAIRMAN: The question is:

"That clause 7, as amended, stand part of the Bill."

*The motion was adopted.*

*Clause 7, as amended, was added to the Bill.*

**Clause 8- Amendment of Section 18,19,43,49**

**Amendment made:**

**Page 14, for lines 3 to 4, substitute**"

"Amendment of sections 18, 19, 43 and 49.

8. In sections 18, 19, 43 and 49 of the principal Act, for the words "Company Law Board", wherever they occur, the words "Central Government" shall be substituted.'. (37)

(Shri Jaswant Singh)

**16.00 hrs.**

MADAM CHAIRMAN : The question is:

"That clause 8, as amended, stand part of the Bill."

*The motion was adopted.*

*Clause 8, as amended, was added to the Bill.*

**Motion re : Suspension of Rule 80 (i)**

**SHRI JASWANT SINGH: I beg to move:**

"That this House do suspend clause (i) of rule 80 of the Rules of Procedure and Conduct of Business in Lok Sabha insofar as it requires that an amendment shall be within the scope of the Bill and relevant to the subject matter of the clause to which it relates, in its application to Government amendment No.38 to the Companies (Amendment) Bill, 2001 and that this amendment may be allowed to be moved."

MADAM CHAIRMAN: The question is:

"That this House do suspend clause (i) of rule 80 of the Rules of Procedure and Conduct of Business in Lok Sabha insofar as it requires that an amendment shall be within the scope of the Bill and relevant to the subject matter of the clause to which it relates, in its application to Government amendment No.38 to the Companies (Amendment) Bill, 2001 and that this amendment may be allowed to be moved."

*The motion was adopted.*

**New Clause 8A – Amendment of Sections**

**55A and 58A**

*Amendment made:*

**Page 14, after line 4, insert –**

**8A. In sections 55A and 58A of the principal Act, for the words "Company Law Board", wherever they occur, the word**

"Tribunal" shall be substituted. (38)

(Shri Jaswant Singh)

MADAM CHAIRMAN: The question is:

"That new clause 8A be added to the Bill."

*The motion was adopted.*

*New clause 8A was added to the Bill.*

*Clauses 9 and 10 were added to the Bill.*

**Clause 11 - Amendment of Section 79**

*Amendment made:*

Page 14, for lines 13 to 16, substitute –

- a. for the words "Company Law Board", wherever they occur, the words "Central Government" shall be substituted;
- b. in sub-section (2) in clause (ii) in the proviso for the words "unless that Board is of opinion", the words "unless the Central Government is of opinion" shall be substituted;
- c. after sub-section (3) the following proviso shall be inserted, namely:-

"Provided that in the case of revival and rehabilitation of sick industrial companies under Chapter VIA, the provisions of this section shall have effect as if for the words "Central Government", the word "Tribunal" had been substituted." (39)

(Shri Jaswant Singh)

MADAM CHAIRMAN: The question is:

"That clause 11, as amended, stand part of the Bill."

*The motion was adopted.*

*Clause 11, as amended, was added to the Bill.*

*Clause 12 was added to the Bill.*

**Clause 13 - Amendment of sections**

**100 to 104 and 107**

*Amendment made:*

Page 14, for lines 22 and 23, *substitute* –

"13. In sections 100 to 104 and 107 of the principal Act, for the word "Court", wherever it occurs, the word "Tribunal" shall be substituted.".(40)

(Shri Jaswant Singh)

**MADAM CHAIRMAN:** The question is:

"That clause 13, as amended, stand part of the Bill."

*The motion was adopted.*

*Clause 13, as amended, was added to the Bill.*

**Clause 14 -Amendment of sections 111 and 111A**

*Amendment made:*

Page 14, for lines 24 to 26, *substitute* –

"14. In sections 111 and 111A of the principal Act, for the words "Company Law Board", wherever they occur, the word "Tribunal" shall be substituted.".(41)

(Shri Jaswant Singh)

**MADAM CHAIRMAN:** The question is:

"That Clause 14, as amended, stand part of the Bill."

*The motion was adopted.*

*Clause 14, as amended, was added to the Bill.*

**Motion re: Suspension of Rule 80 (i)**

**SHRI JASWANT SINGH:** I beg to move:

"That this House do suspend clause (i) of rule 80 of the Rules of Procedure and Conduct of Business in Lok Sabha insofar as it requires that an amendment shall be within the scope of the Bill and relevant to the subject matter of the clause to which it relates, in its application to Government amendment No.42 to

the Companies (Amendment) Bill, 2001 and that this amendment may be allowed to be moved."

MADAM CHAIRMAN: The question is:

"That this House do suspend clause (i) of rule 80 of the Rules of Procedure and Conduct of Business in Lok Sabha insofar as it requires that an amendment shall be within the scope of the Bill and relevant to the subject matter of the clause to which it relates, in its application to Government amendment No.42 to the Companies (Amendment) Bill, 2001 and that this amendment may be allowed to be moved."

*The motion was adopted.*

**New clause 14A -Amendment of section 113**

***Amendment made:***

**Page 14, after line 26, insert –**

"14A. In section 113 of the principal Act, for the words "Company Law Board", wherever they occur, the words "Central Government" shall be substituted.". (42)

(Shri Jaswant Singh)

MADAM CHAIRMAN: The question is:

"That new clause 14A be added to the Bill."

*The motion was adopted.*

*New clause 14A was added to the Bill.*

**Motion re: Suspension of Rule 80 (i)**

SHRI JASWANT SINGH: I beg to move:

"That this House do suspend clause (i) of rule 80 of the Rules of Procedure and Conduct of Business in Lok Sabha insofar as it requires that an amendment shall be within the scope of the Bill and relevant to the subject matter of the clause to which it relates, in its application to Government amendment No.43 to the Companies

(Amendment) Bill, 2001 and that this amendment may be allowed to be moved."

**MADAM CHAIRMAN:** The question is:

"That this House do suspend clause (i) of rule 80 of the Rules of Procedure and Conduct of Business in Lok Sabha insofar as it requires that an amendment shall be within the scope of the Bill and relevant to the subject matter of the clause to which it relates, in its application to Government amendment No.43 to the Companies (Amendment) Bill, 2001 and that this amendment may be allowed to be moved."

*The motion was adopted.*

***New Clause 14B – Amendment of Section 11B***

*Amendment made:*

*Page 14, after line 26, insertâ€*

**14B.** In section 117B of the principal Act,--

.

a. in sub-section (4), for the words "Company Law Board", wherever they occur, the words "Central Government" shall be substituted;

(b) after sub-section (4), the following proviso shall be inserted namely:

*Provided that in the case of revival and rehabilitation of a sick industrial company*

under Part VIA, the provisions of this section shall have effect as if for the words "Central Government", the word "Tribunal" had been substituted.;"(43)

(Shri Jaswant Singh)

**MADAM CHAIRMAN :** The question is:

"That new clause 14B be added to the Bill."

*The motion was adopted.*

*New clause 14B was added to the Bill.*

*...(Interruptions)*

**SHRI VARKALA RADHAKRISHNAN** : Madam, how many times will the rules be amended? There should be an account for this. This is due to illegal and even irregular drafting of the Statute. This is very unfortunate that the rules are always suspended.

SHRI P.H. PANDIAN (TIRUNELVELI): In the Drafting Committee, we drafted well.

MADAM CHAIRMAN: They have improved the drafting now.

SHRI VARKALA RADHAKRISHNAN : You will say like that. I cannot say it. It is really unfortunate. Madam, you are setting a bad precedent. So many times, the rules are suspended.

MADAM CHAIRMAN: And you are setting a bad precedent by disturbing the House all the time.

### **Motion Re: Suspension of Rule 80( i)**

SHRI JASWANT SINGH: I beg to move:

"That this House do suspend clause (i) of rule 80 of the Rules of Procedure and Conduct of Business in Lok Sabha in so far as it requires that an amendment shall be within the scope of the Bill and relevant to the subject matter of the clause to which it relates, in its applications to Government amendment No. 44 to the Companies (Amendment) Bill, 2001 and that this amendment may be allowed to be moved."

MADAM CHAIRMAN: The question is:

"That this House do suspend clause (i) of rule 80 of the Rules of Procedure and Conduct of Business in Lok Sabha in so far as it requires that an amendment shall be within the scope of the Bill and relevant to the subject matter of the clause to which it relates, in its applications to Government amendment No. 44 to the Companies (Amendment) Bill, 2001 and that this amendment may be allowed to be moved."

*The motion was adopted.*

### ***New Clause 14C – Amendment of Section 117C***

*Amendment made:*

*Page 14, after line 26, insertâ€*

**14C.** *In section 117C of the principal Act, for the words words "Company LawBoard", at both the places where they occur, the word "Tribunal" shall be substituted. (44)*

(Shri Jaswant Singh)

MADAM CHAIRMAN: The question is:

"That new clause 14C be added to the Bill."

*The motion was adopted.*

*New clause 14C was added to the Bill.*

**Motion Re : Suspension of Rule 80 (i)**

**SHRI JASWANT SINGH: I beg to move:**

"That this House do suspend clause (i) of rule 80 of the Rules of Procedure and Conduct of Business in Lok Sabha in so far as it requires that an amendment shall be within the scope of the Bill and relevant to the subject matter of the clause to which it relates, in its applications to Government amendment No. 45 to the Companies (Amendment) Bill, 2001 and that this amendment may be allowed to be moved."

MADAM CHAIRMAN: The question is:

"That this House do suspend clause (i) of rule 80 of the Rules of Procedure and Conduct of Business in Lok Sabha in so far as it requires that an amendment shall be within the scope of the Bill and relevant to the subject matter of the clause to which it relates, in its applications to Government amendment No. 45 to the Companies (Amendment) Bill, 2001 and that this amendment may be allowed to be moved."

*The motion was adopted.*

***New Clause 14D – Amendment of Section 118***

*Amendment made:*

*Page 14, after line 26, insert—*

**14D.** *In section 118 of the principal Act, for the words "Company Law Board", the words "Central Government" shall be substituted.'. (45)*

**(Shri Jaswant Singh)**

MADAM CHAIRMAN: The question is:

"That new clause 14D be added to the Bill."

*The motion was adopted.*

*New clause 14D was added to the Bill.*

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**Clause 15 – Substitution of new section**

**for section 141. Rectification by**

**Central Government of register of charges**

**Amendments made:**

**Page 14, for lines 29 to 39, substitute--**

**141.** (1) The Central Government, on being satisfied -

- a. that the omission to file with the Registrar the particulars of any charge created by a company or of any charge subject to which any property has been acquired by the company or of any modification of any such charge or of any issue of debentures of a series, or that the omission to register any charge within the time required by this Part of that the omission to give intimation to the Registrar of the payment or satisfaction of a charge, within the time required by this Part, or that the omission or mis-statement of any particular with respect to any such charge, modification or issue of debentures of a series or with respect to any memorandum of satisfaction or other entry made in pursuance of section 138 or section 139, was accidental or due to inadvertence or some other sufficient cause or is not of a nature to prejudice the position of creditors or shareholders of the company; or

(6) that on other grounds, it is just and equitable to grant relief, may on the application of the company or any person interested and on such terms and conditions as it may seem to the Central Government just and expedient, direct that the time for the filing of the particulars or for the registration of the charge or for the giving of intimation of payment or satisfaction shall be extended or, as the case may require, that the omission or mis-statement shall be rectified.

(2) The Central Government may make such order as to the costs of an application under sub-section (1) as it thinks fit.

(3) Where the Central Government extends the time for the registration of a charge, the order shall not prejudice any rights acquired in respect of the property concerned before the charge is actually registered.'. (46)

Page 15, *Omit* lines 1 to 13. (47)

(Shri Jaswant Singh)

MADAM CHAIRMAN: The question is:

"That clause 15, as amended, stand part of the Bill."

*The motion was adopted.*

*Clause 15, as amended, was added to the Bill.*

**Clause 16 – Amendment of section**

**144 and 163**

***Amendment made:***

Page 15, line 15, *for* "Tribunal" *substitute* "Central Government". (48)

**(Shri Jaswant Singh)**

**MADAM CHAIRMAN: The question is:**

"That clause 16, as amended, stand part of the Bill."

*The motion was adopted.*

*Clause 16, as amended, was added to the Bill.*

**Clause 17 - Substitution of new section**

**For section 167**

***Amendment made:***

*Page 15, for lines 18 to 28 substitute-*

Power of '167. (1) if default is made in holding an annual  
Central general meeting in accordance with section 166,  
Government the Central Government may, notwithstanding  
to call annual anything contained in this Act or in the articles  
general of the company, on the application of any member

meeting of the company, call, or direct the calling of , a

general meeting of the company and give such

ancillary or consequential directions as the Central Government thinks expedient in relation to the calling, holding and conducting of the meeting.

***Explanation.- The directions that may be given under this***

sub-section may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

(2) A general meeting held in pursuance of sub-section (1) shall, subject to any directions of the Central Government, be deemed to be an annual general meeting of the company: Provided that in the case of revival and rehabilitation of sick industrial companies under Chapter VIA, the provisions of this section shall have effect as if for the words "Central Government", the word "Tribunal" had been substituted.'. (49)

(Shri Jaswant Singh)

MADAM CHAIRMAN: The question is:

"That clause 17, as amended, stand part of the Bill."

*The motion was adopted.*

*Clause 17, as amended, was added to the Bill.*

**Clause 18 – Amendment of Section 168**

*Amendment made:*

Page 15, line 30, for "Tribunal", substitute "Tribunal or the Central Government, as the case may be". (50)

(Shri Jaswant Singh)

MADAM CHAIRMAN : The question is:

"That clause 18, as amended, stand part of the Bill".

*The motion was adopted.*

*Clause 18, as amended, was added to the Bill.*

*Clause 19 was added to the Bill.*

**Clause 20 - Amendment of sections 188 and 196**

*Amendment made:*

Page 16, line 10, for "Tribunal, substitute "Central Government". (51)

(Shri Jaswant Singh)

MADAM CHAIRMAN: The question is:

"That clause 20, as amended, stand part of the Bill."

*The motion was adopted.*

*Clause 20, as amended, was added to the Bill.*

*Clause 21 was added to the Bill.*

**Clause 22 – Amendment of sections 219**

**and 225**

*Amendment made:*

**Page 16, for lines 26 and 27 substitute –**

*Amendment of 22. In sections 219 and 225 of the Principal Act,  
sections 219 and for the words "Company LawBoard' wherever*

- 1. they occur, the words "Central Government" shall  
be substituted. (52)*

*(Shri Jaswant Singh)*

MADAM CHAIRMAN: The Question is:

"That clause 22, as amended, stand part of the Bill."

*The motion was adopted*

*Clause 22, as amended, was added to the Bill*

**MOTION RE: SUSPENSION OF RULE 80 (i)**

SHRI JASWANT SINGH: I beg to move:

"That this House do suspend clause (i) of rule 80 of the Rules of Procedure and Conduct of Business in Lok Sabha in so far as it requires that an amendment shall be within the scope of the Bill and relevant to the subject matter of the clause to which it relates, in its applications to Government amendment No. 53 to the Companies (Amendment) Bill, 2001 and that this amendment may be allowed to be moved."

MADAM CHAIRMAN: The question is:

"That this House do suspend clause (i) of rule 80 of the Rules of Procedure and Conduct of Business in Lok Sabha in so far as it requires that an amendment shall be within the scope of the Bill and relevant to the subject matter of the clause to which it relates, in its applications to Government amendment No. 53 to the Companies (Amendment) Bill, 2001 and that this amendment may be allowed to be moved."

*The motion was adopted.*

**New Clause 22A - Amendment of Section 229**

*Amendment made:*

*Page 16, after line 27, insert –*

*Amendment 22A. In section 229 of the principal Act, in of section sub-section (2), after clause (f), the following*

*1. clause shall be inserted, namely:-*

*"(g) Whether the cess payable under section*

*441A has been paid and if not, the details of amount of cess not so paid." (53)*

*(Shri Jaswant Singh)*

MADAM CHAIRMAN: The question is:

"That newclause 22A be added to the Bill."

*The motion was adopted.*

*Newclause 22A was added to the Bill.*

**MOTION RE: SUSPENSION OF RULE 80 (i)**

**SHRI JASWANT SINGH: I beg to move:**

*"That this House do suspend clause (i) of rule 80 of the Rules of Procedure and Conduct of Business in Lok Sabha in so far as it requires that an amendment shall be within the scope of the Bill and relevant to the subject matter of the clause to which it relates, in its applications to Government amendment No. 54 to the Companies (Amendment) Bill, 2001 and that this amendment may be allowed to be moved. "*

**MADAM CHAIRMAN: The question is:**

"That this House do suspend clause (i) of rule 80 of the Rules of Procedure and Conduct of Business in Lok Sabha in so far as it requires that an amendment shall be within the scope of the Bill and relevant to the subject matter of the clause to which it relates, in its applications to Government amendment No. 54 to the Companies (Amendment) Bill, 2001 and that this amendment may be allowed to be moved. "

***The motion was adopted.***

### **New Clause 22B – Amendment of section 235**

**and 236**

**Amendment made:**

**Page 16, after line 27, insert –**

Amendment 22B. In sections 235 and 236 of the Principal Act, of sections for the words "Company Law Board", wherever 235 and 236 they occur, the word "Tribunal" shall be substituted. (54)

(Shri Jaswant Singh)

**MADAM CHAIRMAN: The question is:**

"That new clause 22B be added to the Bill."

The motion was adopted.

New clause 22B was added to the Bill.

**MOTION RE: SUSPENSION OF RULE 80 (i)**

**SHRI JASWANT SINGH: I beg to move:**

"That this House do suspend clause (i) of rule 80 of the Rules of Procedure and Conduct of Business in Lok Sabha in so far as it requires that an amendment shall be within the scope of the Bill and relevant to the subject matter of the clause to which it relates, in its applications to Government amendment No. 55 to the Companies (Amendment) Bill, 2001 and that this amendment may be allowed to be moved."

MADAM CHAIRMAN: The question is:

"That this House do suspend clause (i) of rule 80 of the Rules of Procedure and Conduct of Business in Lok Sabha in so far as it requires that an amendment shall be within the scope of the Bill and relevant to the subject matter of the clause to which it relates, in its applications to Government amendment No. 55 to the Companies (Amendment) Bill, 2001 and that this amendment may be allowed to be moved."

The motion was adopted.

**New Clause 22C – Amendment of Section 237**

Amendment made:

**Page 16, after line 27, insert –**

22C. In Section 237 of the principal Act, in clause (b), in the opening portion, for the

words "if in the opinion of the Company Law

Board", the words "in its opinion or in the

Opinion of the Tribunal" shall be substituted. (55)

(Shri Jaswant Singh)

MADAM CHAIRMAN: The question is:

"That new clause 22C be added to the Bill".

The motion was adopted.

New clause 22C was added to the Bill.

**Motion Re: Suspension of Rule 80 ( i )**

SHRI JASWANT SINGH: I beg to move:

"That this House do suspend clause ( i ) of rule 80 of the Rules of Procedure and Conduct of Business in Lok Sabha in so far as it requires that an amendment shall be within the scope of the Bill and relevant to the subject matter of the clause to which it relates, in its applications to Government amendment No.56 to the Companies (Amendment) Bill, 2001 and that this amendment may be allowed to be moved."

MADAM CHAIRMAN: The question is:

"That this House do suspend clause ( i ) of rule 80 of the Rules of Procedure and Conduct of Business in Lok Sabha in so far as it requires that an amendment shall be within the scope of the Bill and relevant to the subject matter of the clause to which it relates, in its applications to Government amendment No.56 to the Companies (Amendment) Bill, 2001 and that this amendment may be allowed to be moved."

The motion was adopted.

New Clause 22 D – Amendment of Section 241

Amendment made:

Page 16, after line 27, insertâ€”

22 D. In section 241 of the principal Act, in sub-section (2), in clause (dd), for the words "Company Law Board", the word "Tribunal" shall be substituted.'. (56)

(Shri Jaswant Singh)

MADAM CHAIRMAN: The question is:

"That new clause 22 D be added to the Bill."

The motion was adopted.

New clause 22 D was added to the Bill.

Clause 23 was added to the Bill.

**Clause 24 – Amendment of section 247,  
250, 251 and 269**

Amendment made:

Page 16, for lines 30 and 31, substituteâ€”

24. In sections 247, 250, 251 and 269 of the principal Act, for the words "Company Law Board", wherever they occur, the word "Tribunal" shall be substituted.'. (57)

(Shri Jaswant Singh)

MADAM CHAIRMAN: The question is:

"That clause 24, as amended, stand part of the Bill."

The motion was adopted.

Clause 24, as amended, was added to the Bill.

SHRI PRIYA RANJAN DASMUNSI : Madam, there are so many amendments to this Bill.

MADAM CHAIRMAN: There are about 90 amendments.

SHRI PRIYA RANJAN DASMUNSI : I think that the Ministry is functioning in a peculiar manner. When the Bill was originally introduced and referred to the Standing Committee, the Ministry very well knew the observations and the recommendations of the Standing Committee. They could have taken only a little time and pain to incorporate all the amendments in the Bill when it came back. ...*(Interruptions)* More than 90 amendments are there. We have never seen it in the past. This is how the Government is functioning. Mr. Minister, either you are not working at all or sitting quiet and only responding to it...*(Interruptions)*

MADAM CHAIRMAN: This could have been raised in the beginning itself.

SHRI PRIYA RANJAN DASMUNSI : I have nothing personal against the hon. Minister. But I point out that this is how the Government is functioning. If we take one minute more, you accuse us of wasting the time of the House. Is the Ministry or the Minister not aware how to present a comprehensive Bill while bringing forward 90 and odd amendments?

MADAM CHAIRMAN: Mr. Minister, they say that the amendments could have been incorporated in a better manner when they came before the House.â€¦*(Interruptions)*

SHRI JASWANT SINGH: Can I explain it?...*(Interruptions)*

MADAM CHAIRMAN: Let the Minister reply to what you have said.

SHRI VARKALA RADHAKRISHNAN We are in the computerised age. This could have been incorporated in a better way. ...*(Interruptions)*

MADAM CHAIRMAN: What is the use of having a discussion at this stage?

SHRI VARKALA RADHAKRISHNAN : Mr. Minister, you are making a mockery of the rules.

SHRI PRIYA RANJAN DASMUNSI: Madam, through you, I make an appeal to the hon. Minister. Let the Ministry and the Government amend their style of functioning. ...*(Interruptions)*

MADAM CHAIRMAN: The Government may please note the objection that when there are so many amendments, they should be incorporated in an appropriate manner.

SHRI VARKALA RADHAKRISHNAN : Rules are suspended in a casual manner. We have framed the rules.â€¦*(Interruptions)* You are suspending the rules. â€¦*(Interruptions)*

SHRI JASWANT SINGH: These are the amendments that we have accepted in accordance with the desire of the Standing Committee. The Standing Committee has desired to make these amendments.

SHRI PRIYA RANJAN DASMUNSI : I agree with you. I salute the hon. Minister for responding to many of the suggestions made by the Standing Committee. It would have been appropriate on the part of the Minister if he had come back to the House incorporating all the amendments in a better way instead of bringing them in this fashion.

MADAM CHAIRMAN: The amendments have to be accepted on the floor of the House.

THE MINISTER OF PARLIAMENTARY AFFAIRS AND MINISTER OF COMMUNICATIONS AND INFORMATION TECHNOLOGY (SHRI PRAMOD MAHAJAN): I tell you the problem. When this happens in one House, the Rajya Sabha is always benefited. They get all the amendments when the new Bill goes to the Rajya Sabha....*(Interruptions)* Please listen to me.

MADAM CHAIRMAN: When you raise a point, you must have the patience to listen to the reply of the Minister.

SHRI PRAMOD MAHAJAN: Madam, this Bill was introduced in the original form in the House. The amendments were suggested by the Standing Committee and those amendments were accepted by the Government. If I have to incorporate those amendments, then first I will have to withdraw the original Bill and introduce a new amended Bill separately.

**श्री राजो सिंह (बेगूसराय) :** अगर इतने अमैन्डमैन्ट्स थे तो आपने समय क्यों नहीं बढ़ाया, मंत्री जी को कठिनाई हो रही है।

**श्री प्रमोद महाजन :** यह हर बार आयेगा, अगले अमैन्डमैन्ट में आयेगा। It will come up every time and it is unfortunate, but we will have to bear with the system. ...*(Interruptions)*

MADAM CHAIRMAN : I am not letting anyone to interrupt the Minister. Let him say what he has to say. Please take your seat.

...(Interruptions)

MADAM CHAIRMAN : You are disturbing the House every minute. This cannot go on. Please take your seat.

SHRI PRAMOD MAHAJAN: I hope the Chief Whip of the major Opposition will appreciate that withdrawing one Bill and then introducing another Bill with amendments, unfortunately, takes little time. But there is no other way. That is why, we have accepted all the amendments suggested by the Standing Committee. If we do not accept the amendments, then the original Bill will be there.

SHRI JASWANT SINGH: But all the amendments can be put to vote in one go.

SHRI PRAMOD MAHAJAN: I thought about it, but the rules do not permit putting all the amendments together to the vote of the House. Every Clause has to be amended and the amended Clause has to be passed. This is the – I do not say ritual – system and one has to bear with it. I am very sorry for the inconvenience caused to all the Members.

MADAM CHAIRMAN : That is all right. Anyway, I thank you all for giving me a breather by this discussion. Now we will continue.

#### **Motion Re: Suspension of Rule 80 (i)**

SHRI JASWANT SINGH: Madam, I beg to move:

"That this House do suspend clause (i) of rule 80 of the Rules of Procedure and Conduct of Business in Lok Sabha in so far as it requires that an amendment shall be within the scope of the Bill and relevant to the subject matter of the clause to which it relates, in its applications to Government amendment No. 58 to the Companies (Amendment) Bill, 2001 and that this amendment may be allowed to be moved."

MADAM CHAIRMAN : The question is:

"That this House do suspend clause (i) of rule 80 of the Rules of Procedure and Conduct of Business in Lok Sabha in so far as it requires that an amendment shall be within the scope of the Bill and relevant to the subject matter of the clause to which it relates, in its applications to Government amendment No. 58 to the Companies (Amendment) Bill, 2001 and that this amendment may be allowed to be moved."

*The motion was adopted.*

#### **New Clause 24A -- Amendment of Section 284**

*Amendment made:*

Page 16, *after* line 31, *insert* "€"

'24A. In section 284 of the principal Act, in sub-section (4), in the proviso, for the words "Company Law Board", the words "Central Government" shall be substituted.  
(58)

(Shri Jaswant Singh)

MADAM CHAIRMAN : The question is:

"That new clause 24A be added to the Bill."

*The motion was adopted.*

*New clause 24A was added to the Bill.*

**Motion Re: Suspension of Rule 80 (i)**

SHRI JASWANT SINGH: Madam, I beg to move:

"That this House do suspend clause (i) of rule 80 of the Rules of Procedure and Conduct of Business in Lok Sabha in so far as it requires that an amendment shall be within the scope of the Bill and relevant to the subject matter of the clause to which it relates, in its applications to Government amendment No. 59 to the Companies (Amendment) Bill, 2001 and that this amendment may be allowed to be moved."

MADAM CHAIRMAN: The question is:

"That this House do suspend clause (i) of rule 80 of the Rules of Procedure and Conduct of Business in Lok Sabha in so far as it requires that an amendment shall be within the scope of the Bill and relevant to the subject matter of the clause to which it relates, in its applications to Government amendment No. 59 to the Companies (Amendment) Bill, 2001 and that this amendment may be allowed to be moved."

*The motion was adopted.*

**New Clause 24B – Amendment of Section**

**Section 304 and 307**

Amendment made:

Page 16, after line 31, insertâ€”

24B. In sections 304 and 307 of the principal Act, for the words "Company Law Board", the words "Central Government or Tribunal, as the case may be" shall be substituted.' (59)

(Shri Jaswant Singh)

MADAM CHAIRMAN : The question is:

"That new clause 24B be added to the Bill."

The motion was adopted.

New clause 24B was added to the Bill.

Clause 25 was added to the Bill.

**Motion Re: Suspension of Rule 80 (i)**

SHRI JASWANT SINGH: Madam, I beg to move:

"That this House do suspend clause (i) of rule 80 of the Rules of Procedure and Conduct of Business in Lok Sabha in so far as it requires that an amendment shall be within the scope of the Bill and relevant to the subject matter of the clause to which it relates, in its applications to Government amendment No. 60 to the Companies (Amendment) Bill, 2001 and that this amendment may be allowed to be moved."

MADAM CHAIRMAN : The question is:

"That this House do suspend clause (i) of rule 80 of the Rules of Procedure and Conduct of Business in Lok Sabha in so far as it requires that an amendment shall be within the scope of the Bill and relevant to the subject matter of the clause to which it relates, in its applications to Government amendment No. 60 to the Companies (Amendment) Bill, 2001 and that this amendment may be allowed to be moved."

The motion was adopted.

#### **New Clause 25A – Amendment of Section 349**

Amendment made:

Page 16, after line 33, insertâ€”

'25A. In section 349 of the principal Act, in sub-section (4), after clause (o), the following clause shall be inserted, namely:-

"(p) amount paid as cess under section 441A.".'. (60)

(Shri Jaswant Singh)

MADAM CHAIRMAN: The question is

"That new clause 25A be added to the Bill."

The motion was adopted.

New clause 25A was added to the Bill.

Clauses 26 to 34 were added to the Bill.

Clause 35 – Insertion of new part VI A

*Amendments made:*

Page 18, lines 17 and 18, *for* "less than fifty per cent.",  
*substitute*

"fifty per cent. or less than fifty per cent.". (61)

Page 18, *for* lines 41 to 43, *substitute* "€"

"causes of such reference or within sixty days of  
final adoption of accounts. Whichever is earlier."  
(62)

Page 19, line 19, *for* "company" *substitute*  
"company on such terms and conditions as may be  
prescribed" (63)

Page 19, lines 21 and 22, *for* "commencement of the inquiry"

*substitute* "date of appointment of such director or  
directors"

(64)

Page 22, *omit* lines 26 and 27. (65)

Page 23, line 30 *for* "two-third creditors" *substitute*  
"three fourth in value of creditors" (66)

Page 25, line 32, *for* "during the period" *substitute*  
"during the period of inquiry under section 424B or  
during the period"

(67)

(Shri Jaswant Singh)

MADAM CHAIRMAN : The question is:

"That clause 35, as amended, stand part of the Bill."

*The motion was adopted.*

*Clause 35, as amended, was added to the Bill.*

*Clauses 36 to 42 were added to the Bill.*

**Clause 43 Insertion of new section 439 A**

*Amendment made:*

Page 28, for line 5, *substitute*"

'(d) the details of workmen and other employees and any amount outstanding to them;

e. such other details as the Tribunal may direct."'. (68)

(Shri Jaswant Singh)

MADAM CHAIRMAN: The question is:

"That clause 43, as amended, stand part of the Bill."

*The motion was adopted.*

*Clause 43, as amended, was added to the Bill.*

*Clause 44 was added to the Bill.*

**Clause 45 --- Insertion of new section 441A,**

**441BN, 441C, 441D, 441E and 441F**

*Amendments made:*

Page 28, *after* line 36, *insert*—

"(4) The Central Government may, by rules made in this behalf, specify the manner in which the cess shall be paid under sub-section (2)". (69)

Page 29, *after* line 6, *insert*—

"(e) amount refunded by the company under section 441G".

(70)

Page 29, *after* line 28, *insert*—

"Refund of fund in certain cases.

441G. (1) Where the fund has been applied by the Tribunal for any of the purposes specified in clauses (a) to (d) of section 441D, such amount of fund shall be recovered from the company after its revival or rehabilitation or out of sale proceeds of its assets after discharging the statutory liabilities and payment of dues to creditors.

(2) the amount referred to in sub-section (1) shall be recovered in the manner as the Tribunal may direct". (71)

(Shri Jaswant Singh)

MADAM CHAIRMAN: The question is:

"That clause 45, as amended, stand part of the Bill."

*The motion was adopted.*

*Clause 45, as amended, was added to the Bill.*

*Clauses 46 to 76 were added to the Bill.*

**Clause 77 – Amendment of Section 513**

*Amendment made:*

Page 35, for, line 27, substituteâ€”

77. In section 513 of the principal Act, after sub-section (3), the following proviso shall be inserted, namely:--

"Provided that, notwithstanding anything contained in any other law for the time being in force a body corporate consisting of such professionals as may be approved by the Central Government from time to time, shall be qualified for appointment as Official Liquidator under section 448". (72)

(Shri Jaswant Singh)

*MADAM CHAIRMAN: The question is:*

*"That clause 77, as amended, stand part of the Bill."*

*The motion was adopted.*

*Clause 77, as amended, was added to the Bill.*

*Clauses 78 to 107 were added to the Bill.*

***Clause 108 – Substitution of new section for***

**Section 621 A composition of certain offences**

*Amendment made:*

Page 40, substitute for lines 1 to 5,â€”

108. For section 621A of the principal Act, the following section shall be substituted,

namely:--

621A. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence punishable under this Act (whether committed by a company or any officer thereof), not being an offence punishable with imprisonment only, or with imprisonment and also with fine, may, either before or after the institution of any prosecution, be compounded by the Central Government on payment or credit, by the company or the officer, as the case may be, to the Central Government of such sum as that the Government may prescribe:

2 of  
1974

Provided that the sum prescribed shall not, in any case, exceed the maximum amount of the fine which may be imposed for the offence so compounded:

Provided further that in prescribing the sum required to be paid or credited for the compounding of an offence under this sub-section, the sum, if any, paid by way of additional fee under sub-section (2) of section 611 shall be taken into account.

(2) Nothing in sub-section (1) shall apply to an offence committed by a company or its officer within a period of three years from the date on which a similar offence committed by it or him was compounded under this section.

*Explanation* – for the purposes of this section, any second or subsequent offence committed after the expiry of a period of three years from the date on which the offence was previously compounded, shall be deemed to be a first offence.

(3) (a) Every application for the compounding of an offence shall be made to the Registrar who shall forward the same, together with his comments thereon to the Central Government.

(b) Where any offence is compounded under this section, whether before or

after the institution of any prosecution, an intimation thereof shall be given by the company to the Registrar within seven days from the date on which the offence is so compounded.

(c) Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence, either by the Registrar or by any shareholder of the company or by any person authorised by the Central Government against the offender in relation to whom the offence is so compounded.

(d) Where the composition of any offence is made after the institution of any prosecution, such composition shall be brought by the Registrar in writing, to the notice of the Court in which the prosecution is pending and on such notice of the composition of the offence being given, the company or its officer in relation to whom the offence is so compounded shall be discharged.

(4) The Central Government while dealing with a proposal for the compounding of an offence for a default in compliance with any provision of this Act which requires a company or its officer to file or register with, or deliver or send to, the Registrar any return, account or other document, may, direct, by order, if it or he thinks fit to do so, any officer or other employee of the company to file or register with, or on payment of the fee, and the additional fee, required to be paid under section 611, such return, account or other document within such time as may be specified in the order.

5. Any officer or other employee of the company who fails to comply with any order made by the Central Government under sub-section (4) shall be punishable with imprisonment for a term which may extend to six months, or with fine not exceeding (fifty thousand rupees) or with both.
6. Notwithstanding anything contained in the Code of Criminal Procedure, 1973—
  - a. any offence which is punishable under this Act with

imprisonment or with fine, or with both, shall be compoundable with the permission of the Court, in accordance with the procedure laid down in that Act for compounding of offences;

- b. any offence which is punishable under this Act with imprisonment only or with imprisonment and also with fine shall not be compoundable.

2 of  
1974.

- 6. No offence specified in this section shall be compounded except under and in accordance with the provisions of this section.". (73)

(Shri Jaswant Singh)

**MADAM CHAIRMAN:** The question is:

"That clause 108, as amended, stand part of the Bill."

*The motion was adopted.*

*Clause 108, as amended, was added to the Bill.*

*Clauses 109 to 117 were added to the Bill.*

**Clause 118 - Substitution of new section**

for section 643 power of central

Government to makes rules relating to

Winding up

Page 41, for lines 23 to 43, substituteâ€”

118. For section 643 of the principal Act, the following section shall be substituted, namely:-

643. (1) The Central Government shall, 5 of  
make rules consistent with the Code of 1908  
Civil Procedure, 1908, providing for all  
matters relating to the winding up of  
companies, which by this Act, are to be  
prescribed, and may make rules providing  
for all such matters, as may be prescribed.

*(2) In particular, and without prejudice to the generality of the foregoing power, such rule may provide for all or any of the following matters, namely:—*

- i. as to the mode of proceedings to be held for winding up a company by the Tribunal;
- ii. for the voluntary winding up of companies, whether by members or by creditors;
- iii. for the holding of meetings of creditors and members in connection with proceedings under section 391;
- iv. for giving effect to the provisions of this Act as to the reduction of the capital;
- v. generally for all applications to be made to the Tribunal under the provisions of this Act;
- vi. the holding and conducting of meetings to ascertain the wishes of creditors and contributories;
- vii. the settling of lists of contributories and the rectifying of the register of members where required, and collecting and applying the assets;
- viii. the payment, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator;
- ix. the making of calls; and
- x. the fixing of a time within which debts and claims shall be proved.

*(3) All rules made by the Supreme Court on the matters referred to in this section as it stood immediately before the commencement of the Companies (Second Amendment) Act, 2002, and in force at such commencement, shall continue to be in force, in so far as they are not inconsistent with the provisions of this Act, till such time the rules are made by the Central Government and any reference to the High Court in relation to winding up of a company in such rules shall be construed as a reference to the Tribunal.".'.*

(74)

Page 42, omit lines 1 to 8. (75)

**MADAM CHAIRMAN:** The Question is:

"That clause 118, as amended. Stand part of the Bill

*The motion was adopted*

*Clause 118, ass amended was added to the Bill*

### **Clause 119 – Insertion of new section 647A**

*Amendments made:*

Page 42, line 13, *for* "Companies (Amendment) Act, 2001",  
*substitute* Companies (Second Amendment) Act, 2002".(76)

Page 42, line 21, *for* "Companies (Amendment) Act, 2001",  
*substitute* "Companies (Second Amendment) Act, 2002".(77)

Page 42, line 24, *for* "Companies (Amendment) Act, 2001"  
*,substitute* "Companies (Second Amendment) Act, 2002".(78)

(Shri Jaswant Singh)

**MADAM CHAIRMAN:** The question is:

"That Clause 119, as amended, stand part of the Bill."

*The motion was adopted.*

*Clause 119, as amended, was added to the Bill.*

*Clauses 120 to 122 were added to the Bill.*

*The Schedule was added to the Bill.*

### **Clause 1 – short title and commencement**

*Amendment made:*

"Page 1, line 3, *for* "Companies (Amendment) Act, 2001",  
*substitute* "Companies (Second Amendment) Act, 2002". (2)

(Shri Jaswant Singh)

MADAM CHAIRMAN: The question is:

"That clause 1, as amended, stand part of the Bill."

*The motion was adopted.*

*Clause 1, as amended, was added to the Bill.*

ENACTING FORMULA

*Amendment made:*

Page 1, line 1, for "Fifty-second Year" substitute

"Fifty-third Year". (1)

(Jaswant Singh)

MADAM CHAIRMAN: The question is:

"That Enacting Formula, as amended, stand part of the Bill."

*The motion was adopted.*

*The Enacting formula, as amended, was added to the Bill.*

*The Long Title was added to the Bill.*

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SHRI JASWANT SINGH: I beg to move:

"That the Bill, as amended, be passed."

MADAM CHAIRMAN: The question is:

"That the Bill, as amended, be passed."

*The motion was adopted.*

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**16.34 hrs.**